

Mediation Concepts and Principles

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| Type | Practical Guidance |
| Document type | Practice Note |
| Date | 2 Feb 2023 |
| Jurisdiction | Saudi Arabia |
| Copyright | LexisNexis |

Document link: https://www.lexismiddleeast.com/pn/SaudiArabia/Mediation_Concepts_and_Principles



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Overview

- Mediation has been prominent in Saudi Arabia for many years as a method of resolving disputes and reaching a negotiated settlement. Unlike arbitration, in Saudi Arabia it is utilised in both commercial and non-commercial disputes. It has particularly been successful in the areas of family law and labor law.
- Saudi Arabia Royal Decree No. M93/1441 on the Commercial Courts Law (Saudi Arabia Cabinet Decision No. 511/1441 Approving the Commercial Court Law) reorganized and empowered Saudi Arabia's commercial courts, and included provisions encouraging the use of alternative dispute resolution. In particular it imposed mandatory conciliation and mediation under certain circumstances.
- Mediation of commercial disputes in Saudi Arabia has been led by the [SCCA Mediation Rules 2016](#)^[1 p.8] that issued mediation guidelines in 2016.
- The SCCA was established by Saudi Arabia Cabinet Decision No. 257/1435 dated 14/6/1435 (15 March 2014).
- SCCA provides alternative dispute resolution services in both arbitration and mediation. It adopts international standards in its rules and model.
- Relevant to enforcement in Saudi Arabia, SCCA mandates tribunals to apply the rules chosen by the parties "[w]ithout prejudice to the rules of Sharia".

Definitions

- *Commercial Courts Law*: Saudi Arabia Royal Decree No. M93/1441 Commercial Courts Law (Saudi Arabia Cabinet Decision No. 511/1441 Approving the Commercial Court Law).
- *Saudi Arabia*: The Kingdom of Saudi Arabia.
- *SAR*: Saudi Arabian Riyals.
- *SCCA*: Saudi Center for Commercial Arbitration.
- *SCCA Rules*: Saudi Center for Commercial Arbitration Institutional Mediation Rules 2016.

Practical Guidance

What is mediation?

- Mediation is a dynamic, structured and interactive process (through a dialogue) where a neutral third-party assists disputing parties in resolving conflict through the use of specialised communication and negotiation techniques, without resorting to court or to arbitration centres. It is an alternative dispute resolution process to resolve conflicts between parties with concrete effects.
- Mediation helps the disputed parties (such as shareholders / partners / franchisors / franchisees) manage their differences in a voluntary and consensual manner to reach a settlement.

Why is mediation important in Saudi Arabia?

- Saudi Arabia Royal Decree No. M93/1441 (Saudi Arabia Cabinet Decision No. 511 /1441) encourages mediation as a means of dispute resolution, by establishing mediation offices within certain courts such as the Family Courts and the Labor Courts.
- Article 8 of Saudi Arabia Royal Decree No. M93/1441 (article 8 of Saudi Arabia Cabinet Decision No. 511/1441) establishes a mechanism to compel the parties to a commercial dispute to mediate before filing the case, in accordance with the implementing regulations of Saudi Arabia Royal Decree No. M93 /1441 (Saudi Arabia Cabinet Decision No. 511 /1441)
- The Ministry of Justice, in the case of labour disputes, obliges the litigating parties to attend mandatory settlement hearings before the Labour Office. This aims to reduce the load of cases in the courts and mitigate the effects of disputes.

Role of the mediator

- The mediator must initiate the conversation and open a dialogue between the disputed parties in the hope that it will be of high quality.
- The mediator must be neutral and must take into consideration the interests of both parties.
- The mediator must not put pressure on the parties. This is a voluntary process where both parties must agree to the rules of mediation, three way conversations and solutions voluntarily and consensually.
- The mediator facilitates a better mutual understanding of the parties, so that their differences, their interests, their motivation and needs are better comprehended as a result.

- The mediator works to achieve fairness in consideration of the parties' interests.

Traits of a mediator

The traits of a mediator are the following:

- Alertness
- Neutrality
- Fairness
- Patience and Tact
- Credibility
- Objectivity and Self-Control
- Adaptability
- Perseverance
- Appearance and Demeanour
- Initiative

The advantages of mediation

Empowerment

- The most important advantage of mediation, amongst other advantages, is that it empowers the parties in their attempt to settle their conflict. Parties may leave the mediation process anytime.
- Consensus is the fundamental feature, which distinguishes mediation from arbitration or any judiciary system. Each party has a veto power until the very end and hence the parties feel safe.

Agreement

- A deal will be found only if all parties agree, and when the solutions have been accepted by everybody. Hence, implementation will be smooth, swift and in good faith, especially in business disputes between shareholders or in franchise deals.

Time-effective

- Mediation is time-effective alternative dispute resolution process. It doesn't take ages to launch and complete a mediation.

Cost-effective

- Mediation is cost-effective alternative dispute resolution process. It costs less to pay one mediator for a short period of time than two lawyers for a long period of time.

Flexibility

- Mediation is flexible and it enables the parties to brainstorm and imagine innovative solutions, and hence generate inclusive agreements addressing all dimensions of the problem. This exclusivity will reinforce the sustainability of the deal.

Healing relationships

- Mediation helps repair the relationship between the parties whereas this hardly exists in court. Business partners may need to work together in the future, and hence interpersonal dimensions are very important.

Confidential

- Mediation is confidential. This is a very important advantage of mediation.
- For instance, the business partners would not want /need their competitors to know the solutions they agreed to resume a partnership or a franchise deal.

Method of mediation

There are six steps in a mediation process, as follows:

1. Introduction
2. Clarifying the facts

3. Exploring the core motivations
4. Exploring possible solutions
5. Getting a commitment
6. Conclusion of the process, drafting the settlement agreement and getting it signed by the parties.

It is advisable to agree to mediation in writing between the parties from the outset and it must be clearly mentioned in the memorandum & articles of association and/or shareholders' agreements and/or partnership agreements between shareholders and/or partners, in franchise and master franchise agreements between franchisors and franchisees and any other type of agreement; as a first step prior to arbitration and/or court proceedings.

The parties shall agree that in case of any dispute between them, the matter shall be submitted to mediation to be negotiated and resolved by a mediator selected by both parties. Mediation could also be agreed to between the parties once the dispute takes place if all parties agree to do so at this point.

A mediation in general terms may not take more than four to five days. On the last day, the mediation/settlement agreement must be drafted by the mediator and signed by the parties.

How to initiate or request mediation through SCCA?

SCCA Rules provide an efficient and effective procedure for non-adversarial dispute settlement.

To initiate a SCCA mediation, the parties shall follow the procedures outlined in article 2 of the SCCA Mediation Rules , which provides as follows:

“The initiating party shall provide the following information to the SCCA and the other party or parties as applicable:

- a) A copy of the mediation provision of the parties’ contract or the parties’ subsequent agreement to mediate.
- b) The names, postal addresses, emails and phone numbers of all parties to the dispute and representatives, if any, in the mediation.
- c) A brief statement of the nature of the dispute and the type and/or amount relief sought.
- d) Any specific qualifications the mediator should possess.

Where there is no pre-existing stipulation or contract by which the parties have provided for mediation of existing or future disputes under the auspices of SCCA, a party may request the SCCA to invite another party to participate in “mediation by voluntary submission”.

Upon receipt of such a request, the SCCA will contact the other party or parties involved in the dispute and attempt to obtain an agreement to proceed with mediate.

How are costs distributed under a SCCA mediation?

Articles 1-6 of the SCCA Mediation Rules outline the costs and fees associated with mediation.

Emergency Mediation Program (EMP) under the SCCA

The Emergency Mediation Program (EMP) is designed to help individuals and businesses that are in financial distress and need immediate attention to their dispute. It also benefits those who are in an ongoing relationship and may seek to preserve it after the dispute has been resolved.

It avoids the need of having in-person meetings by using a dedicated videoconferencing platform. It addresses the financial distress parties may be facing by providing a special fee schedule with discounts of up to 67% compared to our regular offerings. It excludes any uncertainty after the settlement agreement has been signed by allowing parties to convert their settlement agreement into an Enforceable Title (Bond) at no additional cost.

The following steps are normally followed through the various EMP stages:

1. Agreement to Mediate
2. Filing of Mediation
3. Mediator Appointment
4. Preparation for the Mediation Conference
5. Summary Briefs
6. Mediation Conference
7. Settlement Agreement
8. Enforceable Title

Overall, mediation in Saudi Arabia is set to become the first choice in resolving disputes, whether commercial or non-commercial with the backing of a number of governmental initiatives to support this. There are range of law firms within the Kingdom with expertise in the area in both the Arabic and English languages, with links to accredited mediation institutions.

Related Content

Legislation

- Saudi Arabia Royal Decree No. M93/1441 Commercial Courts Law
- Saudi Arabia Cabinet Decision No. 511 /1441 Approving the Commercial Courts Law
- 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. 257/1435 dated 14/6/1435 Establishing the Saudi Center for Commercial Arbitration

SCCA Links

- [SCCA](#)^[2 p.8]
- [SCCA Mediation Procedure Guide](#)^[3 p.8]
- [SCCA Mediation Request Form](#)^[4 p.8]
- [SCCA Emergency Mediation Guide](#)^[5 p.8]
- [SCCA Emergency Mediation Fees](#)^[6 p.8]
- [Saudi Centre for Commercial Arbitration Institutional Arbitration Rules 2018](#)^[7 p.8] (SCCA Arbitration Rules)

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Education

- Mini MBA, Kings College London, UK
- Doctor of Legal Practice, Nottingham Law School, Nottingham, UK
- 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.

Notes

1. ^{^ [p.3]} <https://www.sadr.org/ADRService-mediation-mediation-rules?lang=en>
2. ^{^ [p.6]} <https://www.sadr.org/>
3. ^{^ [p.6]} https://sadr.org/assets/uploads/download_file/Arbitration_Rules_2018_-_English.pdf
4. ^{^ [p.6]} <https://www.sadr.org/ADRService-mediation-mediation-request?lang=en>
5. ^{^ [p.6]} https://sadr.org/assets/uploads/EMP_Guide_En_F_Dec_2021.pdf
6. ^{^ [p.6]} https://sadr.org/assets/uploads/Fee_schedule_En_F_Dec_2021.pdf
7. ^{^ [p.6]} https://drive.google.com/file/d/100NLqTesQi0lBBBkaV00DU9eTb8bFED_/view
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