

Legal 500 Country Comparative Guides 2024

Saudi Arabia

International Arbitration

Contributor



Legal Advisors,
Abdulaziz I. Al-Ajlan &
Partners in
association with Baker
& McKenzie Limited

Abdulrahman AlAjlan

Principal, Head of Dispute Resolution Practice |
abdulrahman.alajlan@bakermckenzie.com

Anton Mikel

Partner, Dispute Resolution Practice | anton.mikel@bakermckenzie.com

Rami Bou Raad

Senior Associate, Dispute Resolution Practice |
rami.bouraad@bakermckenzie.com

Aseel Ali

Trainee Associate | aseel.ali@bakermckenzie.com

This country-specific Q&A provides an overview of international arbitration laws and regulations applicable in Saudi Arabia.

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Saudi Arabia: International Arbitration

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

The New Arbitration Law, issued on 24/5/1433H (corresponding to 16 April 2012G) (the "**Arbitration Law**") governs domestic and international arbitration in KSA. The Law is broadly based on the UNCITRAL Model Law. The New Arbitration Law and its Implementing Regulations (which came into force on 7 June 2017) are mandatory laws.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Saudi Arabia is a signatory to the New York Convention since 1994. Its accession to this treaty was predicated on the principle of reciprocity; that is, that it would enforce the arbitral awards of other signatories to the treaty only if they enforced Saudi awards. The Kingdom's accession to the New York Convention is also predicated on the principle that enforcement of arbitral awards would not violate Islamic law (Sharia) or public policy.

3. What other arbitration-related treaties and conventions is your country a party to?

Saudi Arabia is also a signatory to the Convention on Judicial Cooperation between States of the Arab League; Convention on the Enforcement of Judgments, Disputes and Judicial Summonses in the Arab Gulf Co-operation Council States; and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The Arbitration Law is broadly based on the UNCITRAL Model Law. Arbitral awards are not enforceable in KSA if they violate Islamic law or public policy.

5. Are there any impending plans to reform the arbitration laws in your country?

Arbitration laws in KSA were reformed in 2012. We are not aware of any impending plans to further reform the arbitration laws.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

Until 2016, there had not been any important institutions regulating arbitration in KSA. However, following the issuance of a Council of Ministers decree in 2014 to form an arbitration center to work under the auspices of the Council of Saudi Chambers, the Saudi Center for Commercial Arbitration (the "**SCCA**") was established for the supervision of domestic and international commercial arbitrations in the Kingdom. The SCCA is the first of its kind in Saudi Arabia and sets forth rules for conducting arbitrations in KSA in accordance with international arbitration standards. The SCCA became operational in 2017 and has been recently handling high-value and complex commercial disputes. We are not aware of any amendments to the SCCA rules being considered.

In the latest developments, the SCCA has released its second edition of the SCCA Arbitration Rules (the "**SCCA Rules**"), effective 1 May 2023. The SCCA Rules build on the first edition and have been developed with a view of reducing costs and maximizing efficiency. A comprehensive review of the earlier edition has resulted in several revisions, which ensure that the SCCA Rules remain up to date and in line with international best practice.

These revisions include, inter alia, fixing of costs, consolidation, joinder, coordination of parallel arbitrations and award review. The SCCA Rules encourage the effective use of technology and the use of electronic document transmission and presentation, taking into consideration the environmental impact, with a focus on data protection practices and cybersecurity, as well as promoting more transparency as it relates to, for example, the disclosure of third-party funders.

Furthermore, the discretionary powers of the arbitral tribunal have been expanded to encourage amicable

resolution of disputes, limitations on the length of written statements and document requests, and remote hearings where practical.

7. Is there a specialist arbitration court in your country?

On 9/4/1440H corresponding to 13 December 2018G, the Permanent Committee of Saudi Arbitration Centers granted a license to establish the Saudi Real Estate Arbitration Center ("Center") as the first center of its kind in the Kingdom of Saudi Arabia and the Gulf states. The Center falls under the umbrella of the Real Estate General Authority and has an independent legal personality administratively and financially. The Center's objective is to settle disputes related to real estate activities, whose parties agree to settle it by arbitration or through conciliation and reconciliation within the framework of the Centre, by a fast and simplified electronic mechanism.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

Article 9 and 10 of the Arbitration Law provide that an arbitration agreement must be in writing and concluded only by persons having legal capacity.

9. Are arbitration clauses considered separable from the main contract?

According to Article 21 of the Arbitration Law, an arbitration clause which forms part of a contract is treated as an agreement independent of the other terms of the contract, and as such, is separable. 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.

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

We are not aware of any such validation principle in Saudi Arabia.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

There is nothing in particular to note vis-à-vis multi-party or multi-contract arbitration. The Arbitration Law aims at affording the parties great flexibility in agreeing as to the conduct of the arbitration. As long as the parties explicitly agree as to how the arbitration should be conducted (and the agreement does not violate Islamic law or public policy), the Law would honor the parties' choices.

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

The arbitration tribunal may request the relevant body or court to assist in the arbitration proceeding as the tribunal deems appropriate for the arbitration process, including summoning a witness or expert or demanding the production of a document. But apart from the forgoing, an arbitration agreement binds only the parties to it. Generally speaking, Saudi court decisions are not published or publicly made available. Moreover, they are not binding on subsequent cases.

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

Any dispute may be arbitrable except for the following:

- Disputes relating to personal status;
- Matters not subject to settlement; and
- Disputes between the Saudi Government or any of its agencies and other parties (whether Saudi or foreign), including under government procurement contracts, without first obtaining official approval.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

We are not aware of any such recent court decisions in Saudi Arabia. However, the decisions of the various courts and judicial committees of Saudi Arabia, including arbitration decisions, and Royal Decrees, ministerial decisions and resolutions, departmental circulars and

other pronouncements of official bodies of Saudi Arabia which have the force of law are not generally or consistently indexed and collected in a central place or made publicly available, and may be designated as confidential. In addition, there is no concept of judicial precedent in Saudi Arabia, which means that the decision of a court or a judicial committee or arbitration panel will have no binding authority in respect of another case. Furthermore, there is no system of court reporting in Saudi Arabia.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

According to Article 38 of the Arbitration Law, subject to provisions of Sharia and public policy in the Kingdom, the parties are free to contractually agree to any substantive law as the governing law of the arbitration. Pursuant to Article 38 (1) (B) of the Arbitration Law, should the parties fail to agree on a substantive law to govern their dispute, an arbitral tribunal will apply the substantive law that it considers to be most relevant to the subject matter of the dispute. Furthermore, pursuant to article 38 (1) (C) of the Arbitration Law, in making its decision, an arbitral tribunal will take into consideration the provisions of the relevant contract and the current practices in the type of treatment and customs, and the previous dealing between the parties.

16. In your country, are there any restrictions in the appointment of arbitrators?

The Arbitration Law imposes very broad limitations on the choice of arbitrators. Under Article 14, an arbitrator must be legally competent, of good character and conduct and reputation, and hold a university degree in Sharia law or legal sciences. With regard to the last requirement, if the arbitral tribunal is made up of more than one arbitrator, it is sufficient that the head of the tribunal fulfills this condition. There are no explicit nationality or gender restrictions on the choice of arbitrators.

17. Are there any default requirements as to the selection of a tribunal?

See response to question 16 above.

18. Can the local courts intervene in the selection

of arbitrators? If so, how?

In an ad hoc arbitration, the court may intervene in case of a disagreement between the parties about the selection process, or if two arbitrators fail to agree on the choice of a third. The court's intervention must be requested by one of the parties. The court's decisions in this regard are non-appealable, except at the end of the arbitration when a party files an application to have an arbitral award nullified.

If the arbitration is administered by the SCCA, the Center would resolve disputes between the parties as to the selection of the arbitrators.

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

The Arbitration Law provides that arbitrators may not be dismissed or challenged unless their neutrality or independence is seriously questioned, or if they do not possess the qualifications agreed by the parties to arbitration. No party may demand dismissing the arbitrator they appointed or participated in their appointment unless for reasons that became known after the appointment of such arbitrator.

If arbitrators are not able to perform their duties, or did not commence them, or discontinued them, leading to unjustifiable delay in the arbitration proceedings, and they did not remove themselves from their position, or if the two parties did not agree on their removal, the competent court, in an ad hoc arbitration, may dismiss them upon the request of any party, by a non-appealable decision.

In an arbitration administered by the SCCA, the administrator would resolve any disputes over the appointment of an arbitrator, without the Court's intervention.

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?

We are not aware of any recent developments concerning the duty of independence and impartiality or disclosure of the arbitrators.

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

Please see above response to question 19. Additionally, Article 19 of the Arbitration Law provides that if the mandate of an arbitrator expires due to death, disqualification, dismissal, recusal, disability or any other reason, a replacement shall be appointed accordingly to the procedures followed in the appointment of the arbitrator whose mandate has expired.

22. Are arbitrators immune from liability?

There are no explicit provisions in the Arbitration Law attributing liability to arbitrators. However, arbitrators could be held liable for violations of other laws, e.g., anti-bribery law. Moreover, if it is shown that the arbitrator was acting out of self-interest, the arbitral award could be nullified and the arbitrator held liable for actual, direct damages his/her actions have caused.

23. Is the principle of competence-competence recognised in your country?

Yes, the arbitration panel is authorized to decide whether it has jurisdiction to resolve a dispute. Its decision may only be challenged after the issuance of the award and before the competent court.

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

If a party filed its claim with the court first, and the other party timely asserted (typically during the first hearing) its right to arbitration under the agreement, the court would dismiss the claim on jurisdictional grounds, if the court determines that the parties have agreed to arbitration.

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

In an ad hoc arbitration, if one of the parties fails to participate in the arbitration by refusing to appoint an arbitrator, the other party can petition the competent court to compel the non-cooperating party to appoint an arbitrator. If the arbitration is administered by the SCCA, the administrator would appoint an arbitrator for the non-cooperating party.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

If all parties agree and the arbitrator agrees to the intervention then a third party can join an arbitration proceeding. If the parties do not agree then the arbitrator cannot allow the intervention.

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

According to Article 23(1) of the Arbitration Law, the parties to the arbitration may agree that the arbitration tribunal shall, pursuant to the request of any party, order any party to take whatever it deems appropriate of temporary or preventative measures required by the nature of the dispute. The arbitration tribunal may oblige the party demanding these arrangements to submit the suitable financial guarantee to implement this procedure.

Pursuant to Article 22(1) of the Arbitration Law, the competent court may order interim or preventative measures upon the request of one of the parties prior to the commencement of the arbitration proceedings, or pursuant to the arbitration tribunal's request in the course of the arbitration process.

If the arbitration is administered through the SCCA, as per Article 23 of the Arbitration Rules of the SCCA, at the request of any party, the tribunal may order or award any interim, provisional or precautionary measures it deems necessary, including injunctive relief and measures for the protection or conservation of property. A party requesting an interim measure must show, inter alia, that harm not adequately reparable by an award of damages is likely to result if the measure is not ordered and that there is a reasonable possibility that the requesting party will succeed on the merits of the claim.

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

No, an anti-suit and / or anti-arbitration injunctions are not available in Saudi Arabia.

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

The Arbitration Law permits the parties to stipulate to the evidentiary rules of any international or national institution or to any country's laws. In the absence of such agreement, the arbitral tribunal will apply Sharia evidentiary rules.

In an ad hoc arbitration, the arbitration tribunal may request the competent court to assist in the arbitration proceeding as the tribunal deems appropriate for the arbitration process, including calling a witness or expert or demanding a document.

If the arbitration is administered by the SCCA, Article 20 of the Arbitration Rules of the SCCA provides, among other things, the tribunal with the authority to direct the order of proof or exclude cumulative or irrelevant testimony or other evidence and at any time during the proceedings, the tribunal may order the parties to produce documents, exhibits, or other evidence it deems necessary or appropriate.

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

The SCCA provides a comprehensive "Code of Conduct" which is applicable to arbitrators. As per the Code, inter alia, chief among an arbitrator's responsibilities is the requirement that the arbitrator be independent and impartial in deciding the matter in dispute. The Code requires arbitrators to make disclosures of any facts which might affect, or appear to affect the perception of their independence or impartiality.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

Arbitration proceedings are usually confidential and attended only by the parties and their representatives. Furthermore, submissions made during these proceedings are not made available to the general public. However, if the parties wish to ensure the confidentiality of the proceedings and the award, they will need to agree

in advance.

Furthermore, arbitral awards are not published in Saudi Arabia. Documents filed in legal proceedings for recognition and enforcement of arbitral awards are not available for public inspection.

32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

Unless the parties to the arbitration agree otherwise, each party bears its own arbitration costs. However, the arbitral tribunal has the authority to allocate the costs to the losing party. Payment of interest is not allowed in Saudi Arabia as it is contrary to the principles of Islamic law.

33. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

Enforcement of arbitral awards (and court judgments) used to fall under the jurisdiction of the Board of Grievances, which is a statutory tribunal distinct from the General (Sharia) Courts. However, the new Enforcement Law, which was issued under Royal Decree No. M/53, dated 03/07/2012, abandoned the old system of enforcement proceedings before the Board and entrusted enforcement of foreign judgments and arbitral awards to the Enforcement Court. In our experience, it remains possible to challenge awards issued outside of KSA, on procedural or jurisdictional grounds, before the Appellate Tribunal of the competent court (i.e., the court that has original jurisdiction over the dispute).

The first step in the enforcement process would be to submit the award to the Enforcement Court. If the judge determined that the award did not contravene Islamic law or public order, is final, the award debtor was properly notified of the arbitration proceeding in the issuing country, and that awards from the issuing country are enforceable in the Kingdom, he will proceed to stamp it as an enforceable instrument and require the award debtor to comply. The enforcement judge has broad authority to seize assets, ban travel, and so forth, to ensure compliance. The Enforcement Law, which applies to both arbitral awards and court judgments, contains detailed provisions about these procedures. Generally speaking, the court does not review the substantive reasoning

behind the award. However, Article 42 of the Arbitration Law mandates that all awards rendered be reasoned and made in writing.

34. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

It is difficult to say with certainty how long it would take for a Saudi court to recognize and enforce an arbitral award. It is highly dependent on whether the respondent contests the judgment; what, if any, assets are available to enforce on; etc. Typically, however, the Enforcement court will begin to impose sanctions (such as freezing monetary assets and freezing government services) within one to two months of the application.

35. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Generally speaking, enforcement of a domestic award is unproblematic because issues of reciprocity and public policy do not arise. In comparison, recognition of a foreign award necessitates more procedural scrutiny and is dependent on, inter alia, the issuing country being a signatory to the New York Convention or similar treaty with KSA, or, failing that, on evidence that the issuing country reciprocates vis-a-vis KSA in enforcing Saudi awards.

36. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

Arbitrators cannot award punitive or exemplary damages as they are bound by the Islamic concept of damages. Generally, the right to damages is limited to compensating the direct, actual loss which the person has suffered to its property. Damages that are consequential or speculative or uncertain in nature are not awarded; however, there is some discretion in interpreting the appropriateness of certain compensation in light of the circumstances.

One of the major developments in 2023 was the issuance of the long-awaited Civil Transactions Law which entered into force in December 2023. The Civil Transactions Law appears to expand the traditional scope of recoverable

damages. The Civil Transactions Law does explicitly recognize lost profits as recoverable compensation. However, it does not explain under what circumstances such profits shall be awarded. Thus it is unclear whether the Civil Transactions Law breaks with past practice and permits somewhat speculative future profits or it is simply a restatement of the traditional approach to damages.

Additionally, payment of interest is not enforceable as it is contrary to the principles of Islamic law. Moreover, generally, each party bears its own legal fees, unless the parties to the arbitration agree otherwise.

Pursuant to Article 22(1) of the Arbitration Law, the competent court may order interim or preventative measures upon the request of one of the parties prior to the commencement of the arbitration proceedings, or pursuant to the arbitration tribunal's request in the course of the arbitration process.

37. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

Under Article 49 of the Arbitration Law, an arbitral award that has been issued in the Kingdom is non-appealable in any way, except through an application to the competent court to have the award set aside ("nullified") on limited, enumerated procedural and jurisdictional grounds. Thus, appeals on the merits are not permitted.

Under Article 50(1), an application to have an arbitral award nullified will only be accepted in limited circumstances, including: (i) where no arbitration agreement exists or such agreement is void or has expired by lapse of time; (ii) incapacity of one of the parties at the time of the signing of the arbitration agreement; (iii) lack of due process; (iv) if the tribunal excludes the application of rules agreed by the parties; (v) irregularities in the constitution of the tribunal; (vi) if the tribunal exceeds its mandate; or (vii) if the tribunal fails to comply with the requirements for issuing the award and if such failure has resulted in an adverse effect on the award. Pursuant to Article 51 (1), an action for nullification of the arbitration award must be filed within sixty (60) days following the date of notification of the award.

It is important to note that it is possible to appeal an award issued in KSA on the ground that the award is contrary to Islamic law and public order.

There is only one level of appeal of a domestic arbitral

award to the court originally competent to hear the dispute. Nullification applications are submitted directly to said court on one or more of the procedural grounds explained above.

38. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

It is unlikely that a court would enforce a waiver to the parties' limited right to appeal on procedural and jurisdictional grounds because such right is given to the parties by law. Pursuant to Article 51 (1), an action for nullification of the award remains admissible even if the party invoking nullification waived his right to do so prior to the issuance of the award.

39. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Typically, the award binds only the parties to the agreement. However, when enforcing the award, the Enforcement Court may issue orders that are binding on a third party (e.g., an order to a financial institution to freeze assets).

40. Have there been any recent court decisions in your jurisdiction considering third party funding in connection with arbitration proceedings?

We are not aware of any court in KSA considering third-party funding in connection with arbitration proceedings. Third party funding is not an option that is common in the Kingdom.

41. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Emergency arbitrator relief, i.e., interim relief, is available under Saudi law, but the burden of proof is high and necessitates a showing that monetary compensation will not suffice and the party will be irreparably harmed due to the passage of time. As such, this type of relief is infrequently used or granted.

The SCCA does offer emergency arbitrator procedures that allow any party to seek emergency relief that cannot await the constitution of the tribunal. The request for

such relief should be justified, and the request should contain a statement of the emergency relief sought, and the reasons why the applicant needs urgent interim measures that cannot await the constitution of the tribunal. The order or award shall be made no later than 14 days from the date on which the file was transmitted to the Emergency Arbitrator. Emergency measures are enforceable and the order or award is binding on parties from the date it is rendered, and parties undertake to carry out the interim order or award immediately and without delay.

42. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

The SCCA does provide for simplified and expedited procedures, which are special fast-track, simplified and reduced cost procedures to administer the arbitration process. Expedited procedures apply in any case where the aggregate amount in dispute does not exceed SAR 4,000,000. Expedited procedures provide parties with a rapid filing process, abbreviated procedure to appoint the arbitrator, the possibility to render the award based solely on parties' written submissions without holding hearings, and abbreviated timelines. The final award is rendered within 180 days from the date the tribunal is constituted.

43. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

There are no limitations under Saudi arbitration laws on who can serve as an arbitrator or counsel in terms of gender, age, or national origin. 2016 witnessed the appointment of the first female arbitrator in Saudi legal history. The opposing party had objected to the appointment of a Saudi female lawyer as an arbitrator, but the court overseeing the formation of the arbitral panel dismissed the objection on the basis of her gender and moved ahead with her appointment.

44. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

In Saudi Arabia, court decisions are not made publicly available. However, a Saudi Enforcement Court may stay the enforcement of an award if it learns that the award is

being enforced elsewhere.

45. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

Decisions of the various courts and judicial committees of Saudi Arabia, including arbitration decisions, and Royal Decrees, ministerial decisions and resolutions, departmental circulars and other pronouncements of official bodies of Saudi Arabia which have the force of law are not generally or consistently indexed and collected in a central place or made publicly available, and may be designated as confidential.

On 18 March 2011, Over-sight and Anti-Corruption Authority (“**Nazaha**”) was established pursuant to Royal Order A/65. Nazaha is an independent public authority which reports directly to the King of Saudi Arabia. Nazaha’s objective is to combat financial and administrative corruption in all public sectors with no exceptions. Usually, the burden of proof is on the claimant.

46. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

In response to the COVID-19 pandemic, the SCCA has offered an emergency mediation program as well as providing online services.

47. Have arbitral institutions in your country implemented reforms towards greater use of

technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

On 31 August 2021, the SCCA announced the launch of a package of enhancements to make its range of services more accessible. They include, among many other things, a reduction in arbitrator fees of up to 30 percent, a 50 percent reduction in initial costs for starting most arbitration proceedings, and the flexibility for parties to now agree to a new alternative fee arrangement based on arbitrators’ hourly rates in addition to the existing ad valorem lump sum model.

48. Have there been any recent developments in your jurisdiction with regard to disputes on climate change and/or human rights?

We are not aware of any recent developments with regards to disputes on climate change or human rights.

49. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

We are not aware of any such decision.

50. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

We are not aware of any such specific measures.

Contributors

Abdulrahman AlAjlan
Principal, Head of Dispute
Resolution Practice

abdulrahman.alajlan@bakermckenzie.com



Anton Mikel
Partner, Dispute Resolution
Practice

anton.mikel@bakermckenzie.com



Rami Bou Raad
Senior Associate, Dispute
Resolution Practice

rami.bouraad@bakermckenzie.com



Aseel Ali
Trainee Associate

aseel.ali@bakermckenzie.com

