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**ESTABLISHING AN INTERNATIONAL COMMERCIAL
COURT IN SAUDI ARABIA: LESSONS FROM DUBAI
AND SINGAPORE**

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ABSTRACT

This article discusses the need and the benefits of establishing an international commercial court in Saudi Arabia. Since Saudi Arabia's legal system has been criticized regarding its openness to international investments, this issue is observed from the perspective of potential investors and business partners interested in doing business in Saudi Arabia. The aim is to determine how setting up a specialized international commercial court will improve the environment for investments and remove legal uncertainties that arise from the lack of such courts. Furthermore, a brief overview of the international rise of commercial courts worldwide will be provided, with comparative examples of the courts in Dubai and Singapore to reveal how those jurisdictions have adapted to the global economy and ensured their positions as regional leaders and investment hubs. The essential procedural rules will be highlighted to provide ideas and directions for Saudi Arabia. Finally, this article will discuss the challenges the

Kingdom faces in the race to become the regional investment leader, and then provide some key takeaways. The objective of this article will be to explain how Saudi Arabia will overcome the challenges in establishing an international commercial court that will specialize in the application and interpretation of international commercial regulations, and why the setting up of an international commercial court will have a positive effect on the attraction of foreign investors to do business in the Kingdom. This will be achieved by examining and discussing Dubai and Singapore as comparative legal systems that have already established flexible dispute resolution forums which have been recognized worldwide.

Keywords: International Commercial Court, Saudi Arabia, international commerce, ADR.

INTRODUCTION

During the second half of the twentieth century, the world of business became much smaller as cross-border and intercontinental global business networks emerged. This dynamic development has led to a new reality where relying only on domestic resources and industry is no longer sufficient for the sustainable growth of the national economy. In the new era of business, it is normal for one enterprise to import resources from different continents and export its products worldwide. Therefore, for one country to be a fertile ground for establishing large cross-border businesses, it is vital to fit into the global scale and be viewed as a reliable partner. This is accomplished by creating a healthy environment where potential international partners will feel safe to invest their resources, knowing that the government will guarantee the safety of the investment.

One of the most important factors in creating a healthy environment which is open for investments is removing legal obstacles and uncertainties. From the investor's perspective, sustainability and predictable outcomes of investments are essential aspects to be protected. Therefore, investors are likely to invest only after inspecting the national legal implications and obligations of their transactions, and not before understanding what will happen if things go wrong. In that sense, countries with a regulatory framework that is sufficiently flexible to accommodate the demand for procedural flexibility are

more likely to have a competitive advantage when attracting investors and business partners outside the national borders. Phillips (2008) proposed that the most significant promise for an image of reliability is the guarantee of legal certainty in connection with the content of the applicable substantive laws and their effective judicial enforcement. Simply put, it is natural for one investor to want to be able to predict the transaction's outcome and anticipate any risks and costs arising from future litigation actions. For example, Hathout, Abdul Rahman and Zakhiri (2020) argue that foreign investors are barely interested in investing in Algeria due to the lack of confidence in the country's current national dispute settlement mechanism both via litigation in the formal court of law, and alternative forum of arbitration.

In an international environment, Bookman and Erie (2021) have argued that one of the most notable prerequisites for a predictable and efficient judicial system is the existence of specialized commercial courts or chambers that may be more or less integrated into the general system of hierarchical courts. Having such courts established indicates that any possible dispute regarding the investment or business transaction will be resolved before a learned judge who has the sufficient expertise and experience to understand the case's complexity and to deliver a fair judgment. In general, such courts are justified based on party autonomy; however, it needs to be clarified that party autonomy is the only or even the main, consideration in international dispute resolution. States, in general, have a clear interest in ensuring that disputes are decided in their jurisdiction to further the development and viability of their legal system (Alcolea, 2022). Various examples of research on this topic clearly indicate that specialized courts resolve disputes in their area of specialization 40 percent faster than is the case for undifferentiated court systems (with all commercial cases filed with, and handled by, courts of general jurisdiction) (World Bank, 2020). Therefore, various factors such as the expertise of judges, cost-efficiency, variety of settlement mechanisms, and the guarantee of a fair and unbiased trial, and an efficient and cost-effective litigation framework (Teh, 2018) were seen as playing a vital role in assessing whether a particular jurisdiction would be a suitable place to open a business or establish a business partnership.

Against this backdrop, establishing a specialized commercial court or tribunal that is well-equipped to handle cases with an international element has proved to be a vital safeguard and magnet for investments.

The further development of new mechanisms that will respond directly to the commercial parties' needs still remains necessary to complement any evolving treaty framework (Guo, 2020). However, it is important to emphasize that the role of such courts will not be fulfilled without the judges who have the necessary substantive law expertise and deep understanding of the international trade regulations and conventions, and the rules governing the conflicts of law. In this regard, having a court with the distinct reputation of expertise and effectiveness will certainly be a clear advantage over traditional litigation routes (Yip, 2019). Furthermore, besides the availability of legal expertise, prominent market players will also desire a guarantee of effectiveness, simplicity, and speed of the court process, which puts pressure on the national legislator to modernise and mitigate procedural inefficiencies in court procedures (Feng & Blackwell, 2018).

Latest developments have shown that the Asian and Middle Eastern courts are following the international trend to improve the efficiency of litigation procedures. This also includes the implementation of state-of-the-art technologies that will enhance judicial effectiveness, and the implementation of alternative dispute resolution mechanisms that guarantee the effective resolution of complex international disputes. For example, courts in the Middle East, Singapore, China, India, and Kazakhstan all operate English-language websites. These virtual networks have created various digital platforms for e-filing and have helped to facilitate communications between the relevant parties and the courts (Walker, 2019). As a further example, courts in Qatar and Singapore are given the authority to compel parties to participate in mediation proceedings before litigation proceedings can be initiated (Godwin, 2017). Jurisdictions in Qatar and Dubai are leading the pack in establishing themselves as commercial and legal hubs, and their Islamic legal traditions obviously do not pose an obstacle to the development of a parallel international commercial litigation framework that borrows heavily from the English common law system (Hamzeh, 1994).

The Kingdom of Saudi Arabia has since the last decade, outlined a strategic vision of development and is on a mission to take the lead in this race to establish commercial and legal hubs and become a conducive environment that is open for new investments. Even though the path is clearly set for modernization, there might still be specific challenges that Saudi Arabia faces in this matter. For example, the

DIFC,¹ Dubai's international court, has tried to curtail Saudi Arabia's political ambitions of becoming a regional investment hub (Hadfield, 2017). This article will discuss the general benefits of establishing a specialized commercial court and how having such a court would enable Saudi Arabia to achieve its ambition of taking the lead over all the other players in the region.

METHODOLOGY

In this paper, the comparative method is chosen as the primary approach due to its effectiveness in exploring similarities and differences among multiple similar jurisdictions. The comparative analysis involves a side-by-side examination of the findings from similar jurisdictions of Dubai and Singapore. This process will facilitate the generation of insights into the underlying factors that contribute to the variations across the jurisdictions. The analysis will be guided by the study's research questions and objectives, enabling potential readers and other researchers to understand and critique the study's main research inquiries.

SAUDI ARABIA: THE MODERNIZATION INCENTIVE AND CHALLENGES

Saudi Arabia's legal system has often received critiques, especially regarding its openness to international investment. This is because, in large part, much of Saudi law is unwritten (Sayen, 1987). Most of the critiques questioned the Kingdom's model of justice based on Sharia principles, which was seen as lacking the specificity required to resolve difficult points of international law (Harb JP & Leventhal, 2015). Such points of view are probably the result of cultural differences between the Western jurisdictions and the Arabic states. However, it may be observed that Saudi courts are composed mainly of judges who are primarily trained to apply Sharia law, without a pronounced tendency to apply foreign law and legal influences (Wakim, 2008). International commercial disputes, especially investment-related disputes, often come with complex legal issues, such as the application of international

¹ Dubai International Financial Centre Courts, Law No. (16) of 2011 Amending Certain Provisions of Law No. (12) of 2004 Concerning Dubai International Financial Centre Courts, art. 5, Oct. 31, 2011.

commercial conventions. Additional training of the Saudi judges to gain more expertise in understanding and applying international legal principles and sources, especially when it comes to the question of the conflict of laws, and understanding which law will be applicable to a particular event, would be an efficient way to overcome such possible cross-jurisdiction differences. This would also include training the Saudi judges to be multilingual. Taking further steps in that direction would empower Saudi Arabia to guarantee effective international adjudication with even more confidence.

Nevertheless, Saudi Arabia is making serious efforts to remove the stigma of its poor reputation, a state of disrepute that has had its fair share of discouraging connotations. For example, as foreign investors have been experiencing difficulties in using arbitration in Saudi Arabia, the Kingdom has enacted the New Arbitration Law in 2012 (Royal Decree M/34 on 24/5/1433H), which is based on the UNCITRAL Model Law on International Commercial Arbitration, but with modifications to ensure that the arbitration process does not 'violate Shari'ah' as practiced in the Kingdom (Ammari & Martin, 2014).

With the adoption of the Saudi 2030 Vision, Saudi Arabia aims to step away from its dependency on oil export industries and to clearly demonstrate the Kingdom's ability to attract foreign investment and commerce (Vision2030, 2022). This positive reform aims to restore confidence in the Saudi legal system, and is very much a part of the broader strategy to attract much-needed investment, domestic and foreign, to the Kingdom's emerging economic sectors (Baamir & Bantekas, 2009). Reform of the country's antiquated and disorganized court system has emerged as a central prong of the country's sweeping modernization of the economic agenda (Kevin & Michael, 2001). Under these reforms, parties can submit petitions and file pleadings online as a part of a broader shift from paper to electronic systems (Lexis Nexus, 2020). These and other reforms have been recognized as important milestones on the road to achieving Vision 2030 modernization by reorganizing the hierarchy and division of labor between Saudi Arabia's domestic courts.²

² See the Implementation Mechanism of the Judiciary Law and the Board of Grievances Law, Royal Decree No. M/78, (19/9/1428H, 1 Oct. 2007), O.G. Umm al-Qura No. 4170 (30/9/1428H, 12 Oct. 2007).

Nevertheless, it is questionable if the current mechanisms are sufficient to meet international business demands. Besides the need to simplify procedures, international businesses and investors will want to know that their cases will be handled by a forum with an international foundation. The reasons for this obviously lie in the fact that potential partners from other jurisdictions and different cultures do not have a sufficient understanding of the implications that Islamic law brings. The key factor that will bring about reliability and confidence in this matter is the *principle of equality of arms*, and this principle can only be fulfilled if there is a guarantee that the court will look beyond the intra-national legal principles. Indeed, Saudi authorities have implemented legislations enabling the reformation of aspects of court procedures. Still, it is unfortunately also the reality that the Kingdom's domestic courts emphasize the exclusivity of the local law and legal system when asked to hear and adjudicate claims with an international or transnational element (Schwebel, 2010).

When the balance of the judge's attention is strongly shifted to domestic legislative with Islamic roots, as it is clearly laid out under Article 48 of the Basic Law of Governance (Basic Law of Governance, 1992), this narrows the scope of judicial discretion and limits the autonomy to decide what laws should apply in the event of a dispute. A foreign investor or potential business partner might, for this reason, have a certain level of anxiety that the eventual dispute involving the investment in Saudi Arabia will always end up being resolved under the principles of Islamic Sharia. When the litigation is excessively rigid on questions of foreign law, this diminishes the freedom of the choice of law offered to parties under arbitration frameworks (Sayen, 2014).

To conclude, despite the clear intentions to modernize the system of litigation, Saudi Arabia still faces challenges of unsettled and, consequently, discretionary application of Sharia, on the one hand, and inconsistent approach to enforcement of non-Sharia compliant foreign judgments (and arbitral awards) on the other (Brown, 1997). Establishing a specialized commercial court might be the needed solution to the challenges that Saudi Arabia faces. Moreover, this paper will continue to reveal that such a court might bolster the confidence of international investors to bring their business to Saudi Arabia. The specialized commercial court would result in more predictable outcomes to eventual disputes and thus increase trust and

confidence that international investments will be properly protected by Saudi Arabia's jurisdiction.

INTERNATIONAL COMMERCIAL COURTS TO FOSTER INTERNATIONAL COMMERCIAL RELATIONS

During the advance of the international economy and industrial globalization, the rise of commercial courts worldwide was a key milestone in the development of international commercial litigation. Each international transaction brings with it certain risks, and international commercial disputes are not a rare occurrence. In that sense, it is to be noted that the relationship between parties in the corporate world is essential in addressing business disagreements, and despite various available dispute resolution mechanisms, the parties are still facing considerable challenges (Dahlan et al., 2021). As the global supply chain mandates cross-border interactions, the potential for disputes involving a non-national or international element invariably increases, leaving states scurrying for solutions on the jurisdictional conflicts and enforcement challenges these types of disputes bring about (Owais, 2018). In this transnational business environment, referring such cases to local courts specialized in applying local legislation might seem like an unfair burden for the courts, and has caused uncertainty for the parties involved. Resolving such cases under national laws is impossible and unacceptable from an international perspective. Furthermore, judges not trained to apply international laws are deprived of the capacity to guarantee a fair trial in cases with an international element. In turn, diversity across legal systems brings constant demand for harmonized procedures on matters as diverse as choice of law, forum selection, and enforcement of foreign judgments and arbitral decisions (Sanga, 2014). In this sense, the emergence of the international commercial courts is the natural consequence of the ever-growing need for the judiciary to live up to rapid and widespread changes in the global economy. The most significant benefits that will come from this type of international commercial dispute adjudications are as follows: the possibility of participation of foreign jurists and experts in judicial panels, incorporation of elements of mediation and other forms of alternative dispute resolution, and more freedom for the parties to opt out of the conventional domestic law procedures (Bookman, 2019). International commercial courts established worldwide serve

to provide a model that blends traditional elements of litigation and arbitration under a one-stop-shop dispute resolution framework (Nedellec, 2019). The highlight of this model of adjudication is its adaptability to the international judicial environment, where the court will be able to serve as a bridge between the differences between jurisdictions of diverse international business partners. Such a hybrid court model goes beyond the scope of local courts that deal only with domestic disputes and this has become its unique entity, and at the same time fundamentally changes the way that commercial litigants access justice and select their forum of choice (Sundaresh, 2018). In addition, such modern specialized courts often rely on advanced electronic technologies in dispute resolution, a practice which has been encouraged globally. For example, electronic arbitration (e-arbitration) is seen as one of the main online dispute resolution mechanisms with significant advantages (Labanieh et al., 2022). For example, it transcends geographical boundaries, leads to significant cost savings as it eliminates the need to travel to the site of adjudication, expedites the process, and offers flexibility in terms of scheduling and the conduct of hearings. However, in the most optimistic account, these courts though still serve a public interest dimension, delivering a form of justice that is sufficiently anchored in legalized procedures. There is the need to evade criticisms that such systems function as little more than arbitral mechanisms dressed in judicial clothing or vice versa (Li Hsien, 2018). Against this backdrop, it is fair to conclude that many of the obstacles facing Saudi Arabia's attraction to foreign investments might be circumvented by establishing the widely touted specialized commercial court.

Such an international commercial framework offers a reconciliation of the differences between the jurisdictions and confronts the cross-cultural challenges that come with international business affairs, thus encouraging global operations and cooperation. Any country that desires to engage in international business and thereby, open itself to new possibilities for more development, investments, and new businesses, must be ready to adapt to global conditions. Enabling an international-friendly judicial system is a mandatory prerequisite to make this possible, and should be recognized as Saudi Arabia's incentive for the future. As Hathout, Abdul Rahman and Zakhiri (2020) have proposed, international commercial contracts are becoming more complicated and need mechanisms of dispute resolution that

are dependable and flexible. The authors furthermore, conclude that the dispute resolution strategies, including international commercial arbitration, provide the parties involved the “freedom they require to come up with systems tailored to their disputes”. In this way, foreign investors would receive a more reliable source of equality of arms in case of investment disputes related to their operations in Saudi Arabia.

Furthermore, in recent developments in the Gulf, the UAE, and Qatar have also established their specialized international courts and the trend is to include the English language as an official language. At the same time, Singapore has already been recognized as the gold standard of a new and novel type of hybridized litigation model, spurring competition across Europe and Asia for national authorities elsewhere to establish their judicial equivalents (Erie, 2020). In that sense, the lack of a specialized commercial court in Saudi Arabia can be seen as a stepping stone to work for further development in the judicial arena. At least, it should be seen as an untenable situation that deserves the attention of lawmakers, as the Saudi legal system is deprived of a significant and effective dispute resolution avenue. To create a healthier investment environment, it can only be concluded that Saudi Arabia should divert its attention to establishing an international commercial court and embrace fully the principle of equality of arms and open the Saudi international litigation framework to the more intense application of international commercial laws. Establishing more sophisticated and efficient international dispute resolution mechanisms would be an essential milestone that will serve to change the course of this race in a way that would benefit Saudi Arabia’s position as a future business leader in the region.

COMPARATIVE ANALYSIS: TAKEAWAYS FOR SAUDI ARABIA

As this article aims to reveal the key takeaways that Saudi Arabia can rely on when deciding on the direction of its adoption of the international commercial dispute framework, exemplary judicial jurisdictions, namely the Dubai International Financial Centre’s Court (Dubai International Finance Court, n. d.) and the Singapore International Commercial Court (SICC) will be reviewed in greater details below.

Dubai International Financial Centre's Court: General

The Dubai International Financial Centre Court (henceforth, DIFC) was established in 2006 and is organized in several stages of development. All judicial proceedings will be made public and written in English.³ The cases are first submitted to the DIFC's own Court of First Instance, which exercises original jurisdiction over civil and commercial disputes involving any of the bodies established by the DIFC.⁴ Original jurisdiction is also exercised over the DIFC's establishments, defined under the DIFC's internal law as "entities or businesses established, licensed, registered, or authorized to carry on business or activities in the Centre."⁵ The second DIFC's appellate court is the DIFC Court of Appeal, and at this court, the jurisdiction is over any appeal cases.⁶ Besides the two-instance organization of the commercial court, it is notable to point out that DIFC has also prescribed the rules under which a judge can be appointed to the bench, in a way that ensures the competency of the tribunal. More specifically, DIFC judges can only be appointed to the bench if they satisfy the following requirements: a) they hold or have held a judicial office in any jurisdiction recognized by the UAE government, and b) they have demonstrated substantial knowledge of common law systems in their careers as experienced lawyers or judges.⁷ By restricting access to the bench, vacancies are reserved for top-tier experts in the field, thus the confidence in the court is enhanced. Furthermore, it is notable that the DIFC rules permit the appointment of foreign judges to the bench. The rules of the DIFC also appear to suggest a strengthened commitment to judicial professionalism, independence, accountability, and transparency. Pursuant to the DIFC's rules, any judge may be struck off the bench if "inability, incapacity or misbehavior [] is found to have taken place by an independent inquiry."⁸

Forum Selection and Party Autonomy

The DIFC Court of First Instance is competent to resolve cases initiated by parties with no clear territorial link or connection with

³ id. art. 13. *ibid*

⁴ id. art. 7

⁵ DIFC Law No. (9) of 2011 amending certain provisions of Law No. (7) OF 2004 art. 2 (U.A.E.).

⁶ id. art. 7.

⁷ id. art. 9(3).

⁸ DIFC Law art. 10.

commercial operations or businesses established in the Dubai Free Financial Zone⁹. However, such a jurisdiction can only be established with the written consent of all parties. The DIFC rules stipulate that the parties must clearly express their intent to designate the DIFC as the exclusive or non-exclusive dispute resolution forum. Furthermore, the DIFC can be selected as the competent court at the conclusion of a contract or alternatively, after a dispute has already arisen in the context of the agreement. Article 5(B)(1)(a) of the same law affirms the exclusive jurisdiction of the DIFC's Appeal Court to admit and determine appeals filed against judgments and decisions first rendered by the Court of First Instance.

Regarding the nature of the procedure, the DIFC aims to reconcile the judicial (discretionary) autonomy and party autonomy, ensuring that the procedure codes are applied flexibly. For example, DIFC courts have the discretion to apply different rules where appropriate, for instance, the rules of evidence followed in England and Wales.¹⁰ The DIFC courts can appoint an independent expert to assist them in any matter that is before them during court proceedings. The DIFC can also transfer any case to the arbitral tribunal. This power to do so incentivizes the intent to shift the priority of applicable law from the priority of the DIFC's internal rules as the primary choice of law and towards a model that emphasizes the party's choice and freedom.¹¹ Furthermore, the parties may elect to exclude the ordinary application of the DIFC's internal laws through jurisdiction agreements incorporating forum selection clauses.

Applicable Law and Enforceability of Judgments

Article 30 of the DIFC's Rules of Court 10/2004 (the law constituting and regulating the rules and practice of the court) states that in exercising its powers and functions, the DIFC Court shall apply:

- (a) the Judicial Authority Law; 139
- (b) DIFC Law or any legislation made under it;

⁹ Dubai International Financial Centre <www.difc.ae>

¹⁰ DIFC Law No 10 of 2004, Art 10. See also Article 5(A)(1)(E) of the Judicial Authority Law which states that the DIFC Courts "have jurisdiction over any claim in accordance with DIFC Laws and DIFC Regulations."

¹¹ Practice Direction 2/2012 on the DIFC Courts' Jurisdiction [defining three types of jurisdiction clauses].

- (c) the Rules of Court; or
- (d) such law as is agreed to by the parties.

Such a framework clearly points out the considerable flexibility of the DIFC to adapt to an international environment, enabling the parties to govern their cases under the laws of their preference. The only limitation is provided for under Article 6 of Dubai Law 12/2004 (as amended) in connection with the regulation of the Judicial Authority at the Dubai International Financial Centre (the Judicial Authority Law), which provides that the law selected by the parties must not conflict with the public policy and public morals of Dubai. As regards to determining the relevant law applicable to a dispute, Article 8(2) of the First Application Law states that “the rights and liabilities between persons in any civil or commercial matter are to be determined according to the laws for the time being in force in the Jurisdiction chosen in accordance with paragraph (2),” and will be under the following order of priority a) the DIFC Law or any other law in force in the DIFC; or when not appropriate or applicable; (b) in accordance with the law of any jurisdiction other than that of the DIFC explicitly provided for under DIFC Law; or (c) the laws of a jurisdiction chosen by the parties or (d) any choice of jurisdiction deemed applicable by the Court or Arbitrator to be most closely connected to the material facts or substance of the dispute; or failing all the above, (e) the laws of England and Wales. A plain reading of the First Application would seem to imply that the DIFC’s own internal rules of law and procedure will prevail in the event of a conflict of jurisdiction.¹²

Furthermore, pursuant to Article 7 of the Judicial Authority Law (Dubai Law 12/2004), all DIFC awards are subject to ratification by the DIFC court before they become effective, and enforceable by mainland Dubai courts (i.e., the courts of general jurisdiction). After an execution order is issued, all ratified awards are enforceable in the UAE and all other GCC countries. Notably, the courts outside the DIFC do not have the competence to review DIFC awards on their merits. As the DIFC is bound by any international conventions ratified by the UAE, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, DIFC awards are enforceable outside the GCC and executable in jurisdictions party to these Conventions. If a debtor party fails to comply with the

¹² DIFC, Law 3/2004 on the Application of Civil and Commercial Laws in the DIFC, para (2).

terms of a DIFC enforcement order, the creditor may take steps under the Practice Direction and file an application to the DIFC-LCIA Arbitration Centre seeking confirmation of the enforceability of the judgment. Once the enforceability of a payment order has been confirmed and upheld, the judgment-converted award may be recognized and enforced in any jurisdiction bound by the reciprocity provisions of the New York Convention (Hwang, 2015). However, this confirmation mechanism is unlikely to have an extra-territorial effect since the New York Convention was originally designed to limit the scope for de novo review of final and enforceable judgments, or awards issued in a foreign jurisdiction.¹³ As Hwang (2014) argues, going before a differently seated tribunal may mean subjecting the arbitration to different rules of arbitrability than what the DIFC is used to. As Judge Hwang (year? Page?) further elaborates: “Choosing a different arbitration institution may have fewer consequences, as most arbitration institutions will accept any Request for Arbitration for purposes of commencing an arbitration by the appointment of a tribunal, and questions of the jurisdiction (arbitrability) will be left to the tribunal. So the arbitration will get underway even outside of the DIFC...And bear in mind that even if the tribunal agrees with my view of the legal validity of our model arbitration agreement, an award eventually rendered that gives the same relief to the claimant/judgment creditor as was granted by our DIFC Courts would still have to be enforced under the [New York Convention]. In that case, the courts of the enforcing country will have to look afresh at the validity of our model arbitration agreement because non-arbitrability is a ground for denial of recognition and enforcement under Article V of the New York Convention”.

Key Takeaways: What Can Saudi Arabia Learn from the Dubai Example?

What Saudi Arabia can learn from the Dubai example is that, the commercial court can be integrated into the internal judicial system as an individual and self-reliant court tribunal, that is specialized in dealing with international commercial matters. Setting up clear judicial procedures and mandatory requirements for the appointment of judges can serve as additional safeguards and guarantees of reliable and fair commercial trials, that override the biases regarding the Saudi

¹³ Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V(1)(c) June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 3

legal system. Furthermore, Saudi Arabia can implement more flexible mechanisms in dealing with international disputes, such as the choice of law, and even the choice of foreign law to be applied if necessary. Moreover, one of the key takeaways from the Dubai example is the emphasis on party autonomy and giving the litigants an option to determine the priority of rules.

Singapore International Commercial Court

Singapore is recognized as the gold standard of a new and novel type of hybridized litigation model, spurring competition across Europe and Asia for national authorities elsewhere to establish their judicial equivalents (Erie, 2020). In its approach to international commercial litigation, Singapore has adopted a deferential approach by allowing parties to opt out of what are traditionally state-mandated procedures – the hallmark of public versus private adjudication – including rules of evidence or appellate review in favor of their own consensually designed and designated procedures (SIC, 2020). The purpose of this approach is that it is a solid attempt to gain an advantage through the unique selling point of linking arbitral and court proceedings under an integrated system. Singapore is the latest country to establish a hybridized dispute resolution model that marries the best of litigation with arbitration (Wong, 2014). In the final analysis, as Singapore’s Chief Justice Meron has put it, “certain cases are better suited for a process that is relatively open and transparent, equipped with appellate mechanisms, the options of consolidation and joinder, and the assurance of a court judgment” (Sundaresh, 2015).

Basic Procedural Rules and Competencies

The Singapore International Commercial Court (henceforth, SICC) is inclined towards alternative dispute resolution mechanisms. This is visible from its authority to compel parties to participate in mediation before litigation proceedings can be initiated (Godwin, 2017). Furthermore, the SICC also shows an inclination towards a hybrid and international mode of adjudication. This is manifest through its power to appoint both domestic and international judges from diverse legal traditions to the bench. Furthermore, the international character of the SICC can be observed from the scope of its jurisdiction, where a claim can be designated international and thus, fall under the competencies of the SICC if: a) the parties to an action have

established business outside of Singapore; b) if no party have a place of business in Singapore; c) if one party has a place of business in a foreign jurisdiction in which a substantial aspect of the obligations relating to the contract in dispute is or has been performed, or to which the subject matter of the claim is most closely connected; and finally d) if parties have submitted a jurisdiction agreement indicating an explicit preference for the SICC as the *lex fori*.¹⁴ The subject matter of the case initiated at the SICC must be of a commercial nature, meaning it arises from a contractual or business relationship. The SICC's governing guidelines set out a non- exhaustive list of commercial acts and subject matter.¹⁵

Before the SICC, the parties may apply for a pre-action certification requiring confidentiality and non-disclosure of any information or document related to the case.¹⁶ It should be noted that the SICC court can override a pre-action order and publish a judgment if it is of significant legal or (presumptively) public interest.¹⁷

Right to Appeal and Review

All decisions of the SICC can be appealed to the General Court of Appeal of Singapore. What makes the SICC different from Dubai's DIFC is the fact that the second instance court is the regular court outside the SICC. What this means is that the SICC is directly integrated into the Singapore judicial system, and not standing outside of it. Thus, the Appeal Courts of Singapore have direct authority to review the SICC rulings and practice, and thereby ensure equal and predictable application of law in the state. This example shows that Saudi Arabia can choose from multiple variations of the competencies of a court, and create a tailor-made solution that can be properly implemented in its internal judicial system. Furthermore, the SICC balances this imperative (of an open and consistent jurisprudence) with respect for party freedoms so that parties may agree in writing to waive, limit, or restrict the right to appeal.¹⁸ In such cases, the SICC must honor the agreement.

¹⁴ Singapore International Commercial Court [SICC], Order 110, r. 1(2)(a),1(3) (2014).

¹⁵ SICC Order 110 at r.1(1)(2)(b).

¹⁶ Singapore International Commercial Court [SICC], Order 110 at r. 10(2).

¹⁷ Singapore International Commercial Court [SICC], Order 110 at r. 10(2).

¹⁸ Supreme Court of Judicature Act.

Under the previous law, the SICC lacked jurisdiction over final arbitral awards,¹⁹ but the amendments to the Supreme Judicature Bill have extended the Singapore High Court's jurisdiction to the SICC. Section 18(D)(2) of the amended Act provides that "...the Singapore International Commercial Court (being a division of the High Court) has jurisdiction to hear any proceedings relating to international commercial arbitration that the High Court may hear and that satisfy such conditions as the Rules of Court may prescribe."²⁰ Pursuant to the Supreme Judicature Bill, the SICC may perform the supervisory review in relation to various matters, including inter alia an application for a stay of court proceedings, the setting aside and enforcement of arbitral awards, the discovery of documents and right to compel witnesses to give evidence in hearings.²¹ Finally, it is to be noted that the SICC tribunal can be composed of domestic and international judges²², which is a further innovative milestone, making this court flexible and easily adaptable to the international environment. However, cases before the SICC and Singapore High Court must be handled in such a way that the clients must be represented by qualified lawyers as required in conformity with Singapore law.

Key Takeaways: What Can Saudi Arabia Learn from the Singapore Example?

The Singapore example and its globally recognized success can be used as the motivation to introduce hybrid court and arbitration models into Saudi Arabia's judicial system. As the discussion above has shown, Saudi Arabia can also choose an option where a commercial court would not be a self-reliant individual tribunal, but a part of regular court instances. This means that Saudi Arabia can choose a model where international commercial cases would be brought before a specialized commercial court, decisions and judgments of which can be reviewed and appealed before a regular Saudi court. What this means is that Saudi Arabia is at liberty to choose an effective method of implementing a specialized court in its internal system without possibly risking overly autonomous behavior from the court.

¹⁹ AKN v ALC [2015] SGCA 18 (noting that courts must resist the refrain from re-examining the legal merits of an award).

²⁰ Supreme Court of Judicature (Amendment) Bill (Bill No. 32/2019) (the "SCJA Amendment Bill").

²¹ Section 6, Singapore International Arbitration Act (Cap 143A) (IAA)).

²² See SICC Judicial Code of Conduct, p.6 < [sicc-code-of-conduct-revised-version-final3-\(6-nov-2020\)181b9add33784d9fba61bd6b12c7ab97.pdf](https://www.sicc.gov.sg/sicc-code-of-conduct-revised-version-final3-(6-nov-2020)181b9add33784d9fba61bd6b12c7ab97.pdf)>

However, to ensure its effectiveness and international attractiveness, Saudi Arabia can learn from Singapore how to put in place flexible and party-autonomy-focused mechanisms, such as the selection of foreign judges and how this can be done while still bounding the court to the internal legal system and ensuring the consistency of the application of the law within the state.

CONCLUSION

As can be observed from the points above, taking further steps to reform its judicial system would give more thrust to Saudi Arabia to establish itself as a regional investment and innovation leader. Firstly, additional reforms would likely remove the stigma of the Kingdom as continuing to uphold a rigid legal system. For some international investors and potential business partners, this would be an incentive to do business in the Kingdom because it would remove the fear of legal uncertainty caused by cross-jurisdiction differences. Judicial reforms will convince Western investors that should their business encounter inevitable disputes, they will have enough guarantees that their case will be reviewed by a specialised court that will duly apply the principles of international laws and is assured that there is adherence to the principle of equality of arms. To overcome current obstacles, the Kingdom should seriously consider setting up a court that will be specialized in the application of international laws and will be able to handle international commercial disputes, with the necessary and sufficient expertise as well as the required training of the judges.

Some of the principles for such a court can emulate the best practices from the Dubai and Singapore courts. It is certainly the right of the relevant parties to select adjudication under the applicable laws and to decide to submit their legal cases to the jurisdiction of their preference. Furthermore, such courts should have a strong inclination towards alternative dispute resolution mechanisms that would be more flexible and expedient, in contrast to the traditional litigation proceedings. Moreover, the increasingly extensive use of technologies in the courts can bring about the expedited and cost-effective process of doing business. One of the key takeaways that should be considered is the right to appoint foreign judges and assistants who can help in dealing with the merits of an individual case. In the end, one of the most critical issues to address is the enforceability of the judgments

rendered by such courts and to ensure that the judgments are also enforceable outside the borders of the Kingdom.

The benefits of establishing a specialized commercial court are substantial and deserve attention. The methods and mechanisms on how to implement the specialized commercial in the context of the Saudi legal system are still being explored and it is hoped that the urgent and necessary reforms can be quickly and successfully implemented in the Kingdom's judiciary.

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