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International Arbitration Agreements as a Source of Legislation and Its Impact on the Saudi Arbitration Law

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Abstract
Encouraging and the flow of more foreign Investments in the Saudi Market which have already has a major role in the Global Market Competition in accordance with its true role in the Millions of Muslims' Hearts. It has provided investors with an alternative way to settle their disputes arising during the Execution of International Trade Contracts of its various types and purposes, thus, it has removed the various obstacles to the traffic of International goods & Services which pursued by different countries to contribute in achieving of Development Programs, it has also provided the most important Foreign Investment guarantees (FOREIGN INVESTMENT) both direct and indirect, in the same manner as in all countries of the World attracting such investment. Eventually, I can only offer some recommendations related to such paper, which involves the awareness raising techniques about the importance of Investors to settle their disputes through Arbitration, for example: To ensure that the Arbitration Law is reviewed every period, in order to remove the ambiguity that surrounds certain Regulations, in accordance with Global Trends, and for example: meant to be impartial, independence, and integrity of the Arbitrator. To take care of the training of workers in the Economic Courts in order to be familiar to the concept of the Arbitration and its importance in the investment boom, it role in reducing the burden on the judges, and identifying the types of assistance that they can provide to the Parties to Arbitral Cases.
Keywords: International Arbitration Agreements, Legislation, foreign Investments, Investment guarantees, Arbitral Cases

1. Preface and Introduction:

Given the importance of speeding up the settlement of commercial disputes, and the slow pace of litigation and accumulation of such disputes in the courts of various countries of the world, the international community has alerted to the importance of establishing an international legal regulation of arbitration as the alternative path to government jurisdiction. These efforts are no more than the result of all the world countries recognition of the importance of settling international trade disputes through arbitration, on the basis that it contributes greatly to the conduct of world trade and the promotion of foreign investments for the benefit of mankind.

That attempt has actually begun to set up some normative agreements, the most important of which is the New York Convention for the Implementation of Foreign Arbitral Awards of 1985. Then, some international conventions were put in place in order to complete the required legal structure to cover all stages of arbitration, most notably the UNCITRAL Model Law of 1985 and its amendments. In addition, some other international regional conventions have also been put in place, including The Geneva Convention on International Commercial Arbitration, 1961 (the European Convention on International Commercial Arbitration), the Washington Convention for the Settlement of Investment Disputes (1965), the Riyadh Arab Convention on Judicial Cooperation (1983) and the Amman Arab Convention on International Commercial Arbitration (1987).

On the other hand, many international arbitration centers have developed internal regulations that greatly contributed to the limitation and codification of arbitral proceedings, such as the London Court of International Arbitration (1903), the American Arbitration Association (AAA) 1992,andthe International Bar Association (IBA) Guidelines on Conflicts of Interest in International Commercial Arbitration, 2004. In addition, the texts of some comparative systems have a major role in this, most importantly the American Federal Law on Commercial Arbitration of 1925.

This is illustrated by four points:

2. First: the historical development of the positions of the international conventions.

Among the most important international conventions that contributed to the legal regulation of international commercial arbitration are the following:

2.1. The New York Convention on the Recognition and Enforcement of the Provisions of Foreign Arbitrators, 1958

whose purpose was to ensure the implementation of foreign arbitral awards, including those issued by arbitration centers. This Convention is a normative convention because it states, in the second paragraph of its first article, that it is open to various countries of the world, and any State may require the application of the principle of reciprocity on the implementation of arbitral awards made by a particular State or States.

2.2. The UNCITRAL Model Law on International Commercial Arbitration, which is issued by the United Nations Commission on International Law on 21 June 1985

which stated in its preamble that: "It aims to assist States in reforming and modernizing their laws on arbitration procedures to take into account the special features and needs of international commercial arbitration." This law dealt with all stages of the arbitration process, beginning with the arbitration agreement, the composition and jurisdiction of the arbitral tribunal, and the scope of the court's intervention through recognition and enforcement of the arbitral award.

As a result of the limitation of the arbitral tribunal's authority to take provisional and custodial measures, without reference to the court originally competent to hear the dispute, amendments were made to this Model Law on 7 July 2006 in order to address some of the proceedings that resulted in case law relevant to the CISG and collected in 2001 in the "CLOUT" system.

This model law was subsequently revised and amended on 6 January 2010 to specifically address certain arbitral proceedings, including the adoption of electronic notification, reduction of the selection of arbitrators, and their obligation to disclose their impartiality and independence, and the numbers of arbitrators who are members of the arbitral tribunal.

2.3. The Geneva Convention on International Commercial Arbitration, 1961.

The first article of which specified that it is applied to the arbitration agreements concluded for the settlement of disputes arising or which could arise on the occasion of international trade operations between natural persons or legal persons having a normal residence or residence in different Contracting States. It is noted that the Geneva Convention has limited its application to arbitral awards made between natural or legal persons having a normal residence or residence in different Contracting States, thus adding to the economic criterion a geographical criterion, which would add to the scope of its work, especially when compared to the New York Convention, which applies to arbitral awards made by an arbitrator in a State other than that which is required to recognize and enforce the provisions of its territory, as well as to the provisions of arbitrators which are not considered national in the States required to recognize or implement such provisions.

2.4. Washington Convention on the Settlement of Investment Disputes, 1965.

The Washington Convention on the Settlement of Investment Disputes and the nationals of the public states related to the Contracting States that are parties, is an Arbitration Convention on the settlement of investment disputes. This convention is characterized by the fact that it has succeeded in achieving an important legislative guarantee that attracts foreign investment. It is a guarantee for the investor against the legislative change in the country in which he invests his money. In accordance with the Convention, it is bound by a stable legislative base which is at the heart of its domestic law by resorting to arbitration, and if agreed upon, there is no room for adhering to the internal legislative restrictions that present the recourse to arbitration for persons of general law in the field of international economic relations.

2.5. Riyadh Arab Convention for Judicial Cooperation 1983.

The main point of this Convention is the recognition of the implementation of judgments and arbitral awards in civil, commercial, administrative and personal matters. The Convention also affirms the executive character of arbitral awards made in a Contracting State, without taking into account the nationality of the team which has been issued in its favor, when the arbitral award is brought before it with a view to its implementation, which can only be respected in its entirety or rejected in certain cases.

2.6. Amman Arab Convention for International Commercial Arbitration, 1987.

The main point of this Convention is that arbitration in accordance with the Convention has two ways, either the pre-dispute arbitration clause or the post-dispute arbitration agreement, and its provisions apply to trade disputes arising between natural or legal persons of any nationality, who are linked to a business transaction with a Member State or one of its persons, or have major headquarters in it.

2.7. The Arbitration law of the London Court of International Arbitration, 1903.

Article 3 of this system states: "The powers of the London Court of International Arbitration provided for in these Rules shall be exercised on its behalf by its President or the Chief Vice President or a group thereof consisting of three or five members of the Court appointed by the President or Vice-President of the London Court of International Arbitration, in accordance with the instructions of the President."It also referred to the importance of the post of the clerk of the London Court of International Arbitration or his deputy, "who work under the supervision of the London Court of International Arbitration." Article 6 also regulated the nationality of the arbitrators. It was decided that: "When the parties are of different nationalities, the individual arbitrator or the President of the Arbitral Tribunal may not have the same nationality as one of the parties, unless the parties

that do not have the same nationality as the nominated arbitrator agree in writing to the contrary."In its second paragraph, it decided that: "The nationality of the parties shall also include persons who have a majority of shares in a company or control interests for the purposes of this article. The citizens of the European Union shall be nationals of the member country to which they belong."

2.8. Arbitration Law of the American Arbitration Association (A.A.A) 1992.

This law states on the importance of writing an arbitration agreement. Its first article states: When the parties agree in writing to refer their dispute to arbitration on the basis of this law of international commercial arbitration, arbitration shall be conducted in accordance with this Law as it is applicable at the date of the commencement of the arbitration, taking into account any amendments that may be agreed by the parties in writing. It also stated that in the case of incompatibility between the law of the association and the procedural rule agreed by the parties, the latter shall be followed. The second article also states that the party intending to commence the arbitration (the respondent) must give written notice to the American Arbitration Association and to the Party or parties that are litigants (the defendants). The arbitral proceedings shall commence from the date on which the notice of arbitration is received by the American Arbitration Association. The most important data of the notification of the arbitration includes: a request to refer the dispute to arbitration, the name and address of each of the parties, a reference to the arbitration clause or arbitration agreement on which the request for arbitration is based, a reference to the contract from which the dispute arose and to which it relates, statement of the requests and incidents indicated to support these requests, the subject and value of the requests, a proposal on the number of arbitrators, the place of arbitration, and the language or languages of arbitration. Article (22) of the American Association regulation also authorizes the arbitral tribunal to take, upon the request of one of the parties, such interim measures as may be necessary on the subject matter of the dispute, including procedures for the preservation of disputed goods, by depositing it with third parties or by selling perishable goods. Such request may also be submitted to the court originally competent to hear the dispute.

2.9. Guidelines on the Conflicts of Interest in the International Commercial Arbitration (2004)

These guidelines are issued by the International Bar Association (IBA). They are universally applicable because they have introduced solutions to many of the problems of the arbitration process resulted from the provisions of the comparative judiciary, the most important of which is the item (3/b), which defined the disclosure, when it decided that: "It does not mean acknowledging the conflicts of interest. The arbitrator who has disclosed to the parties considers himself unaligned, impartial and independent of the parties, despite the facts disclosed, otherwise he will refuse to stand or step down. Thus the arbitrator who discloses feels that he is capable of carrying out his task. The aim of the disclosure is to allow the parties to confirm their agreement with the arbitrator's judgment and to explore the situation further if they wish. The Working Group hopes that the issuance of this general standard will remove the confusion that disclosure raises doubts sufficient for the arbitrator not to be valid, and instead, the objection would be successful if the objective test was met."

These guidelines also showed, in the form of lists, many examples of the arbitrators' conditions. Among these lists is the red list, which showed the conditions that the parties may not waive:

- If one of the parties and arbitrator is one entity or if the arbitrator is the legal representative of one of the arbitration parties.
- If the arbitrator is a director, a chairman or a member of a board of directors, or has the same writing authority as one of the parties.
- If the arbitrator has a financial interest of great importance to a party or the outcome of the action.
- If the arbitrator is currently providing advice to the party appointed by him or to a party related to that party, or if the arbitrator or his or her institution obtains significant financial income from that party or from a related party.

Among these lists also is the green list that Parties may waive:

- If the arbitrator has published a public opinion (for example, an article in a legal journal or a public lecture) relating to an issue raised in arbitration as well (but the arbitrator did not focus on the subject matter of the arbitration).
- If a law firm has previously provided services against one of the litigants on a subject unrelated to the subject matter of the dispute.
- If the arbitrator has a relationship with the other arbitrator or with the lawyer of a party through professional membership or social institutions.
- If the arbitrator and the lawyer of one of the parties have already assumed the task of arbitration or doing legal work together.

I would like to note that some of these guidelines were amended in October 2010 and in 2014 (second guideline). They developed a solution to the problem that arises when the parties are confused when they ignore their intention in resolving their disputes through negotiation or mediation, when they agree that disputes

between them which are not resolved by negotiation or mediation are settled by arbitration. Article (94) of this second guideline included the necessity of the parties agreement to resolve their disputes through negotiation, while item (95) pointed to the need to resolve disputes through mediation, and item (96) has stated that the parties shall agree on resolving their disputes first through negotiation or mediation, then, at a third stage, through arbitration.

3. Second: The Historical Development of Arbitration in the Kingdom of Saudi Arabia.

The Saudi lawmaker, like the majority of lawmakers, has been concerned with the status of resolving the disputes of traders since the time of the founding monarch-may God have mercy on him- and it reached the current legal regulation of arbitration after a time of practice and experience resulting from the international and regional case law of commercial disputes. In this regard, it is possible to divide this regulation into three phases:

3.1. Phase I: Phase of the Commercial Court System.

This phase is two-way:

On one hand, the lawmaker was concerned by the decision of the Council of Ministers No. 186 dated 5/2/1387 AH to establish the commercial dispute resolution bodies in order to settle the disputes of traders stipulated in the regulations and resolutions, including disputes arising from the application of the Companies Law and the imposition of the penalties provided therein. That was until the terms of reference of these bodies were transferred, under the Council of Ministers Resolution No. 167 of 14/9/1401, from the beginning of the financial year 1408 AH to the Board of Grievances.

On the other hand, the lawmaker issued the Commercial Court Law issued by the Supreme Order No. 32 on 15/1/150 AH, and amended by Royal Decree No. M/2 on 15/1/190H, which contains provisions for the settlement of commercial disputes through arbitration; these provisions are:

Article (493): "If the two disputing parties decide to empower a person or persons, so they make an official document approved by the Court of Justice and contains the conditions on which they agree on whether the arbitration has a certain period or the arbitrators' judgment shall be effective whether by the agreement of the arbitrators or the majority and any other agreement. Then they sign and submit it to the Court.

Article (494): "The arbitrators shall check the statements of the parties on the legitimate rules and seize their statements, papers and bonds, and the testimony of their witnesses, and they may judge upon what appeared to them within the terms of the arbitration deed.

Article (495): "If it appears that the judgment issued by the two arbitrators is identical to its rules and to the arbitration deed, it shall be authorized by the court and shall be executed and if it violates any of this, it shall be dismissed by the commercial court.

Article (496): "The arbitrators, whether they are court officials or an elected committee, must submit their judgment signed to the court and the court shall, after its scrutiny and taking the statement of the parties concerning whether they have any objections, ratify it if it is in accordance with its rules or revoke it if it is contrary to it."

The preliminary or superficial reading of these provisions shows the Saudi lawmaker's long-standing tendency to establish some important principles that govern the arbitration process. The most important of these is the freedom of the parties to choose the method of arbitration to resolve their disputes away from the governmental judiciary, as well as the arbitration agreement through an official paper, edited by means of notaries, including the conditions and rules applicable to the dispute, the authority of the arbitral tribunal to assess the documents and hear the witnesses, as well as signing the judgment and submitting it to be reviewed by the competent court to ensure that the terms of the arbitration agreement are implemented before it is ratified and ordered to be implemented, as well as towards the license of the establishment of the commercial arbitration as a profession carried out by persons chosen by the litigants, from those who have long experience in this field.

3.2. Phase II: The Saudi Canceled Arbitration Law

This phase began with the issuance of the Saudi Arbitration Law No. 167 of 14 September 1401 AH and its Executive Regulation No. 46 dated on 12/7/1403, which abolished the provisions related to arbitration contained in the Commercial Court system issued by the Supreme Order No. (32) on 15/1/150 AH. The majority of its provisions were in accordance with the provisions of the UNCITRAL Model Law of 1985, as well as with the New York Convention for the Implementation of Foreign Arbitral Awards. However, it did not keep up with the practical developments of the case law, especially with regard to the arbitral tribunal's authority to take provisional and conservative decisions, and the conditions that must be met by the arbitrators, including neutrality, independence and impartiality, as well as prolonging the procedures of the adjudication of the disputes, which would have been close to the jurisdiction of the State. Article 3 of its executive regulations stipulates that: "The arbitrator shall be a national or a foreign Muslim, those of free professions or others, and he may be a State employee after the approval of the entity that the employee works in. In case of the multiplicity of

arbitrators, their chief must be aware of legitimate rules, commercial regulations and customs and traditions in force in the Kingdom." At the same time, it contained practical texts of importance that were overlooked in the current arbitration law, such as those stipulated in Article (6) which states: "The body that is competent in hearing the dispute shall file the applications for arbitration submitted to it and shall issue a decision approving the arbitration document."

3.3. Phase III: The current Saudi arbitration law

The current phase of the arbitration law has started since the issuance of the current arbitration law issued by Royal Decree No. M/34 dated on 24/5/1433 AH, which came in line with the majority of the provisions of the international conventions referred to in that paper, with the exception of some of the statutory developments that have been omitted, as set out in section IV of that paper.

4. Third: the impact of the international conventions on the Saudi arbitration law

It is well known that the practical experiences and case law that adjudge in various international commercial disputes are the main reason behind the introduction of any future amendments to the international arbitration regulations. It is noted that the current Saudi arbitration law is in line with the majority of the provisions of the international conventions governing international commercial arbitration. This is illustrated by the following:

- **Who is the arbitrator?**

On the grounds that the arbitrator is s the one who resolves people disputes, so the question arises about the extent of similarities and differences between him and the government judge. The reason for this is that the fundamental differences between the two require accurate distinction. Some French jurisprudence considers that the arbitrator is a judge, who is sought by the adversaries of their own volition, and they submit their disputes to him in order to be judged. If f they refuse to appoint an arbitrator, the other opponent has the right to demand compensation or to request the appointment of the arbitrator through the court.

The Court of Appeal of Paris ruled that the arbitrator, in all senses of the word, was subject to all the principles and rules of the law,

And then he must undertake his mission in full independence. the French Court of Cassation has long asserted that:"The arbitrator's judgment has all the characteristics of the judicial decisions, and is imposed on those who asked for arbitration, and it is immediately accepted, and the arbitrators are judges and not agents.

The Arab jurisprudence considers that the arbitrator, although he replaces the judge in the adjudication of the dispute agreed upon by arbitration, does not have his status or authority or power. Its liability shall be determined in accordance with the general rules, and shall be sued for compensation by the usual procedures for the timely submission of claims. While others consider that the arbitrator is not a judge of the government, and is therefore bound by the arbitral task before it is carried out, so that the powers granted to him are used only in the interest of achieving the interest sought by the parties to arbitration. Thus, if he placed such powers outside the limits prescribed for them, he would place himself under legal liability.

- **Legal adaptation of the arbitration profession**

The weighting between contractual and judicial adaptation is important, as the effects of the legal adaptation of the arbitrator's role are reflected in the manner in which he exercises his work and assesses his course in the face of adversaries, which distinguishes his task from other similar tasks that precede the arbitration process. In this regard, some see that arbitration has a mixed nature and begins with an agreement and procedures and ends with an arbitral decision, and these different stages of arbitration make the assertion of having a contractual status an infringement, and the assertion of its juridical status is also considered an excess of the whole truth. Most often, it is necessary to rely on the mixed status of the arbitration, with a reservation of weighting the contractual status sometimes, and using the juridical status other times. It is on the one hand an agreement and compromise; and on the other hand a form of special judiciary. Arbitration is a quasi-judicial process. This was highlighted by the English Supreme Court in the Gevraj v. Hashwani case, as the court the court ruled that: "There is a contract between the parties and the arbitrator or arbitrators appointed, and under this contract, necessary services are provided for its implementation, and that the arbitrator is not a person acting under a contract to carry out work within the meaning of the 2003 Work Regulations, and his duty requires him to rise above the interests of the parties."

The judgment of the French Court of Cassation in 1972 in the Yuri case states: "The appointment of an arbitrator is not a unilateral act, even when it is initiated by one party alone. It is a result of the common intention of the parties, which take into consideration the qualities of the person whom they claim to adjudicate their dispute." In the same judgment, the Court affirmed that "independent opinion is indispensable in the exercise of the judicial authority, whatever the source of that authority".

Similarly, the Court of First Instance judged in Paris Homs Refinery that: "The arbitrator is a judge, not a representative of the party that appointed him, and must be of judicial status, although his appointment was made by one party alone." The Paris Court of Appeal had also the same judgment, as it ruled that the arbitrator shall

not be an agent of the parties, since the contract between the parties to the arbitration and the arbitrators has a unique form."

Finally, we point out that this view was put forward by Philip Fockard in his report to the International Criminal Court on the status of arbitrators in 1995, saying: "The settlement of the dispute by the arbitrator is not an "assignment" or "work," as recognized by all, and the parties to the dispute are not allowed to go beyond that by giving him affecting the content of his judgment." That is because classifying the relationship as an agency contract is indisputable, since the real purpose of the agency is to grant the agent the power of representation; however, the arbitrator does not represent the parties and is automatically granted judicial authority.

In other words, the arbitrator has a judicial role and, as a result, he must be unaligned, independent and impartial.

Commenting on all of the foregoing, we see that arbitration, whether contractual or judicial, will be of no value without the existence of legislative texts regulating it, starting with the arbitration agreement, to the procedures that must be followed, up to the arbitral award and its implementation.

- **The extent of the commitment of the Kingdom of Saudi Arabia international conventions**

Article 2 of the Saudi Arbitration Law states that: "Without prejudice to the provisions of the Islamic Shariah and the provisions of the international conventions to which the Kingdom is a party, the provisions of this Law shall apply to any arbitration, regardless of the nature of the regularity relationship in which the dispute is involved. If this arbitration took place in the Kingdom, or the commercial arbitration internationally conducted abroad, and its parties agreed to subject thereof to the provisions of such law. The provisions of this Law shall not apply to disputes concerning personal status and matters in which conciliation is not permissible."

It is intended not to breach of the provisions of the Islamic Shariah, those Shari'a provisions derived from the sources of Islamic legislation agreed upon, namely:

1. **Book of God.** Which is the Holy Quran, God Almighty said: (A book explained its verses, to be the Arabian Koran for a nation having the knowledge, and knew that: the words of God Almighty are sent down on his Messenger Muhammad peace be upon him,
   In the Arabic sentence, transmitted to us frequently and written in the Koran begun suratalfat'ha, and sealed by suratalnas
2. **The Sunnah (of the Prophet) of Muhammadiyah concluding.** The sunnah in the language is: the way and the biography, and the sunnah of the great prophet Muhammed (PBUH) is: what is attributed thereto prophet Muhammad (PBUH) by a saying, an action and a report, and is divided into: the saying sunnah, the actual sunnah and the affirmative sunnah.
3. **Consensus:** It is in the language: a special and public people agreement on one of the matters, and in the jurisprudence: it is the agreement of the diligent person in the era of the ages on the religious command, as called to the saying of the truth, for saying of God Almighty: (therefore, you shall collect your matters, your partners, then your matter can not be upon you a grief then comply me and do not look thereof)
4. **Measurement, which is** in the language carrying the thing to his counterpart, and in the jurisprudence carried a branch on the origin of the common cause, such as the prohibition of inebriating drink carrying on alcohol drink, for their participation in the cause of prohibition, which Iskar

In addition to the various sources among the scholars of Sharia, namely:

1. **Discretion in legal matters.** It is in the language that considering the thing as a good thing .it is said that the diligent who deviates from a clear measurement to a hidden measurement or it is a diligent person who deviates from a total provision to evidence preferred thereof such a deviation.
2. **Interests sent.** The interest is the good and benefit, defined by Imam Ghazali as the intent of Sharia of the creation and image thereof are: keeping religion, saving the soul, saving the mind, keeping the offspring, and saving money.
3. **Custom.** Which is familiar with the people in their customs and transactions, and custom in the law is the habit of people to follow a certain rule with their belief in its binding force
4. **The previous divine Sharia.** It means the provisions that God has made to the former nations on the tongue of their messengers, God Almighty says: "I have legislated for you from the religion what Noah commanded, which we have revealed to you and we taught Ibraham, Moses, and Jesus.")
5. **The words of the Sahabi.** The companion in the language called on the companion from: his fellow accompanied by companions by joining, which accompanied him, Sahabi is who met the Prophet, (PBUH) accompanied him a long time, took the knowledge thereof, and died on Islam
6. **Alastshasah.** It is taken from the taking of anything, which is the rule in the form of an order in the second time, based on its provenance in the first time, because there is nothing to change .
7. **Blocking excuses.** The excuse: begging by means (4), and is intended to close the means that lead to the taboos, even if it is permissible and the application thereof the prohibition of the drugs trade; because it may lead to the taboos.

The question is usually raised as to whether the Kingdom is a party in the international convention? And the reason is that article (14/2) of the Vienna Convention on the Law of Treaties 1969 AD used the terms of

acceptance and approval in the field of disclosure of will of the final state towards the convention commitment;

Whereas it was stated as follows: "The State shall express its consent to be bound by the Treaty by accepting or approving thereof by similar terms to those applicable to ratification".

the Saudi legislator in article(2), when he used the term "party" hereto, wanted to ratify the treaty because the Kingdom could be a party in a treaty that was not completed to enforce the quorum. The Kingdom could sign or agree on the treaty, without being internationally abide with its provisions, and may join an international treaty without being abide with its provisions, since ratification of the international convention is : a legal act under which the competent authority conclude conventions in the State declares its approve ofthe treaty and its satisfaction to be abided with its provisions definitively at the international leve, or is the act by which the will of the State expressed by the competent organizations shall be confirmed by giving the treaty the force of law. This means that the final procedure by which the legal effects of the convention are arranged

The purpose of ratification is to give the State an opportunity to entertain before the final abide of the convention, especially since the convention often contains many serious obligations. So that they do not acquire the legal capacity as soon as they are signed and become obligatory to the States only after ratification and public international law did not indicate how such ratification would take place,

Which mean that its procedures were the functions of domestic law.

I, therefore appeal to the Saudi legislator to replace the sentence of (and the provisions of the international conventions to which the Kingdom is a party hereto) contained in Article (2) of the Arbitration Law to the phrase (and the provisions of the international conventions ratified by the Kingdom).

- **Conditions of the international arbitration:**

Article (3) of the current Saudi arbitration law showed that four conditions thereof the arbitration shall be international, this article came entirely in accordance with the international agreements, where stipulated that " arbitration shall be international in provisions of this law, if the subject was a claim related to the international trade in the following conditions:

1. If the headquarter of the business of the arbitration parties located on more than state at the time of the arbitration agreement conclusion, whether any party has more business center so the consideration is the more related to the claim subject, if any or all of the two parties of the arbitration has not certain business center so the consideration is his residence.
2. If the business center of the two arbitration parties located on the same state at the time of arbitration agreement conclusion and one of the following venues located abroad:
   - Venues of holing the arbitration as determined by the arbitration agreement or referred to the appointment way.
   - Venues of implementation substantial part of the obligations resulted from the commercial relationship between the two parties.
   - The most related venues to the claim subject.
3. If the two parties agree to resort to organization, permanent arbitration body or arbitration center located outside the kingdom.
4. If the arbitration subject covered by the arbitration agreement related to more than a state.

5. Arbitration agreement

Article (9) of the Saudi Arbitration Law is in complete conformity with the provisions of the international conventions in respect of the arbitration agreement, stating that:

1. The arbitration agreement may be predetermined the claim, whether independent or in a particular contract. The arbitration agreement may also be subsequent to the claim, although a case has been filed before the competent court, in such condition the agreement shall determine the matters contained by the arbitration, otherwise the agreement is void.
2. Arbitration agreement shall be in writing, otherwise the agreement is void.
3. The arbitration agreement shall be in writing if it is included a document issued by the two parties of arbitration, or if it contains documented correspondence, telegrams or other means of electronic or written communication. The reference in a contract, or referring to a document containing a condition for arbitration, Serve as an arbitration agreement.

Any reference in the contract to the provisions of a model contract, an international convention or any other document containing an arbitration clause shall be deemed to be in the award of the written arbitration agreement if the assignment is clear in considering this condition as part of the contract."

This clause is in accordance with article (7) of the UNICTRAL model law year 1985, stated that:

1. An arbitration agreement is an agreement between the two parties to refer to arbitration all or some of the determined claims that have arisen or may arise between them in respect of a determined legal relationship,

whether contractual or contractual. The arbitration agreement may be in the form of an arbitration clause contained in a contract or in the form of a Separate arbitration agreement.

2. The arbitration agreement shall be in writing and the agreement shall be considered in writing if in the form of a document signed by the two parties or in the exchange of messages or telegrams or in the exchange of allegation and defense information, in which one party says that the arbitration agreement is approved by one party and not denied by the other party. The reference in a contract to a document shall include an arbitration clause, as an arbitration agreement provided that the contract is in writing and that the reference has been made so as to make that condition part of the contract."

One of the most important consequences of the absence of an arbitration agreement is the right of the losing party to the arbitration award to request the void of this sentence in accordance with article (50/1 / A) of the Saudi Arbitration Law which states: the arbitration award void case shall not be accepted unless in the following conditions: if there is no arbitration sentence, the agreement was void, voidable or the expiry end. Also article (5/1/A) of New York Convention for year 1958 in respect of the Recognition and Enforcement of Foreign sentences of arbitrators , which states that: " arbitration agreement or void, The recognition and execution of the judgment may be refused at the request of the adversary to whom the judgment is made, unless it is submitted to the competent authority of the Court The parties to the agreement provided for in Article 2 were in accordance with the law to which the incompetent persons apply, or that the said agreement is not valid in accordance with the law to which the parties have subjected it or, if not provided for in accordance with the law of the country in which the judgment was pronounced ".

6. Formation of the Arbitral tribunal

Article (13) of the Saudi Arbitration Law regulates the formation of the arbitration panel, as follows: "The arbitration panel shall be consisting of one arbitrator or more, provided that the number shall be individual, otherwise the arbitration shall be void.

According to that article, the parties shall choose one arbitrator or more, otherwise the arbitration is void. The reason for this is that the number of arbitrators shall be selected in odd, so that in the case of a difference of the members of the arbitration panel, taking decisions in majority unless the arbitration is voided in accordance with article(7/1) of the amendment of the UNICTRAL Model Law for year 2010 , which provides that: "If the parties have not already agreed on the number of arbitrators, and have not agreed within 30 days of the date on which the notice of arbitration has been delivered by the defendant, there shall be Only one arbitrator, appointed three arbitrators."

Here we are referring to, the principle of choosing the arbitrator or arbitration panel is that the parties have the right to nominate an individual arbitrator or an arbitration panel. This principle is not absolute but rather a relative principle. It is constrained to follow these liabilities to the legal deadlines for the selection of their arbitrators, as well as in the case of the selection of the third arbitrator by the chosen arbitrators, or in the case of agreement on the jurisdiction of a particular Arbitration Center for Dispute Resolution,

in the latter case the arbitrators shall be appointed by the administration of the Center (1).All the above, the adversary may object to the chosen arbitrator for example, Article (11) of the Arbitration Procedures Regulations of the G.C.C Commercial Arbitration Centre (GCCCAC) states that: "The Secretary-General shall appoint the Commission, whether from an individual or a tripartite arbitrator, on the basis of Article (12) of the Rules of Arbitration Procedure([12])".We also referred to, that the rules of forming the decided arbitration panel, which are decided in most arbitration centers, do not prevent parties from agreeing to replace them, in this respect article (8/1) of the arbitration rules of the Cairo Regional Center for International Commercial Arbitration (CRCICA) stated that: The Parties may agree on another procedure for the formation of an arbitration panel other than the procedure provided in these Rules."

7. Principle of competence by the competence

The principle of competence by competence is concerned with the jurisdiction of the arbitration panel to adjudicate the defenses relating to its jurisdiction in the arbitration proceedings. The Saudi legislator argues that the defenses relating to this principle are unessential formal defenses[(3)]. This principle was adopted by Article 20 of the Arbitration Law which stated that:

1. "The arbitral tribunal shall decide in the related defenses to incompetence including the defenses based on no arbitration agreement, prescribe, void or not including the dispute subject.
2. Defenses shall give the arbitral tribunal incompetence according to the deadline referred to thereof in paragraph (2) of article (30) of this law .
   The appointment or participate in appointment of an arbitration by any party shall not prescribe the right in submit any of these defenses. But the plea that the arbitration agreement does not include in the matters raised by the other party during hearing the case shall be given simultaneously unless the right is prescribed. In all conditions the arbitral tribunal may accept the delayed defense if it sees that the delay was for an

accepted reason.

3. The arbitral tribunal shall decide in the defenses referred to thereof in paragraph (1) of this article before deciding in the matter, it may add to the matter to decide in them together, if the arbitral tribunal decided that it refused the defense it may not appeal except by filing a case in respect of the arbitration award invalidation ending the full dispute according to article (54) of this law.

This article is in line with the model UNICTRAL amendment for year 2010, article (23) thereof provided as follows:

1. "The arbitral tribunal has the right to decide its competence including any objections on the existence of the arbitration agreement or its validation, for this purpose the arbitration which is a part of the contract is heard as an independent agreement of the other contract clauses. The arbitral tribunal award shall not be heard spontaneously invalid contract, invalidation
2. The claim of incompetence shall be submitted in the deadline of inclusion in defense statement, the related counter claim or the filed case for the purpose of the compensation claim in the reply of that case. The party shall not be prevented from submitting that defense due to appoint or participate in appoint an arbitration. But the claim of the arbitral tribunal go too far its power shall be submitted when the matter which is claimed that it go too far its power is raised, through the arbitration procedures, the arbitration tribunal may accept in both conditions beyond this deadline if it sees that the delay was with an accepted reason.
3. The arbitration tribunal may judge any of the referred defenses in article (2) either because a principal matter or decide its power. The arbitral tribunal may continue the arbitration procedures and issue an award, regardless any appeal in respect of its competence not yet be judged by the court."

That article is discussing the power of the arbitral tribunal in respect of the judge in some formal defenses which is adhere by the litigants and raises some important points[1]:

First: Types of the formal defenses judged by arbitral tribunal :

One of the most important formal defenses that is judged by the arbitral tribunal, at the request of the litigants, that it does not competent over the case, or because of the absence of an arbitration agreement, prescription, invalidation, or not including to the dispute subject.

The arbitral tribunal incompetence may be related to the arbitrator, for example, no agreed qualifications, exist of doubts that may influence the neutral and independence, and the absence of an arbitration agreement that concerns the absence of the arbitrator, or the exposure of the agreed party to compulsion, fraud or fault, and prescription means the end of valid. Its invalidation means that it is dissolved or dissolved by the force of law, and its non-inclusion in the subject matter of the dispute means that the agreement did not deal with resort to arbitration, a condition or stipulation, or even referral to another contract valid o invalid.

Second: schedule of adherence to formal defenses

The legislator did not determine the schedules of the formal defenses that relatedto the arbitral tribunal incompetence or the absence of an arbitration agreement, prescription, invalidation or non-inclusion of the subject matter of the dispute, and even the reference referred to in this regard, paragraph (2) of Article (30), the schedules did not be clarify[2].And by reference to the general rules in the commencement of the defenses, it is clear that the non-substantive formality out that the formality of non-substantive defenses must be expressed before going into the defense or the abandonment defense in the subject, where in this regard is provided in article (24) of the Amman Convention on Arbitration for year 1987 that: "claim of incompetence and the other formal defenses shall be before the first hearingthe arbitral tribunal shall judge thereof before entering into the subject and its decision shall be final in this regard."

The relative invalidity is the "type of interest protected by the law" if the interest is general. The invalidity of the violation is absolute if the interest of the litigants, then the invalidity of the violation of the rule is a relative invalidity.

This is because of the adherence indolent of that defenses is considered an implied acceptance by the arbitration agreement, that acceptance not approved because the arbitration agreement shall be written and explicit , and the substantive formality defenses, including the claim of international, specific or venue incompetence, only some of them are from the public law and may be adhered to at any condition of the case, but the arbitral tribunal shall judge thereof spontaneously, as well as the judge of the dispute.

In this regard, we refer to Article (73) of the Law of Procedure before Sharia Courts for year1435 A.H. determined the defenses that are considered to be public law provided that:, as well as the claim of specific court incompetent, non-hearing the case for the absence of capacity, interest, or for any other reason. As well as the claim of non-hearing the case, to be decided by the Courts spontaneously, and may be claimed at any condition in which the case is made".

The operative is that the foreign arbitral tribunals did not consider such competence and judged on the subject matter of the dispute, without examining the matter of its competence. Therefore, the legislator decided that the losing litigant shall be entitled to file a case to invalidate the award.

Third: The limits of adherence to formal defenses before the arbitral tribunal:
The legislator does not restrict the freedom of the litigants to adhere to formal defenses, whether the arbitrator is appointed by the other arbitrator or through the court, or even by way of his own accord, and that freedom raises the question of its purpose and whether it is different from what was decided on the response of the arbitrator chosen by the litigant.
We see that, the purpose sought by the legislator is to deal with the appointment condition of the arbitrator by a foreign arbitral tribunal, and to prove the right of the litigant to adhere the formal defenses to ensure his right to file a future invalidity case because the arbitral tribunal shall reply to such defenses. This position on the part of the legislator is acceptable because it guarantee the invalidity of the foreign arbitral award.
Fourth: The power of the arbitral tribunal to respond to formal defenses:
The legislator obliged the arbitral tribunal to respond to formal defenses relating to its incompetence or to the absence of an arbitration agreement, description, invalidity or for its non-inclusion in the subject matter of the dispute.
However, he grants the right to determine the schedule of reply, whether the separation of the subject or with him, and often this reply is within the provisions of the arbitral award, and here raises the question about the condition of non-response of the arbitral tribunal on the formal defenses related to the incompetence? In paragraph (3) of Article (20), where it is considered that the incompetence of the arbitral tribunal is one of the reasons for requesting invalidation of the award, namely after its issuance.
Thus, we recommend the dispute parties with the adherence to that defenses shall be retained as the most important documents in the future invalidity case, either formal copy of the minutes of the hearing at which the claim was made or by an official declaration to both the arbitral tribunal and the other litigant.

8. Arbitration Actions

The Article (25) showed the Arbitration Actions of Saudi Arbitration Law in accordance and International Agreements situation, which decides that:

1. "The parties of Arbitration have the right to agree on the procedures which the Arbitral Tribunal followed it, including their right to subject such procedures to the applicable rules at any organization or an entity, or an arbitration center whether in or outside the Kingdom, as long as it is not opposing the Awards of The Islamic Sharia.

2. If such agreement is not exist, the Arbitral Tribunal has the right, subject to the provisions of Islamic Sharia & provisions of that Law, to choose the Arbitration Procedures which deems appropriate to it.

This clause agrees with the Article (19) of amended UNCITRAL Model Law in 2006 Calendar, which decides that:

1. "Subject to the awards of that Law, the two parties have the freedom to agree to the Awards which the Arbitral Tribunal shall follow when proceeding with the arbitration.

2. If there is no such agreement, The Arbitral Tribunal has the right, subject to the Awards of that Law, to proceed in arbitration in the manner which deems appropriate to it, including the vested authority of Arbitral Tribunal to determine the admissibility of the approved evidences and its relevance, feasibility, and its importance.

Generally, the Arbitration Actions mean that the set of procedural rules which Arbitrators shall follow up starting from the Arbitral Tribunal formation till they hand down their rulings about the dispute, and in origin that the Parties have the freedom to choose the Procedures shall be followed about the adjudication on the dispute, and the priority goes to the procedures that determined by the parties, in case of non-determining the parties for such procedures, it is left up to the Tribunal within the Law Limits. Each of the parties has the freedom to determine the Ordinary Arbitration Actions include all of the followings:

- Determining the time and place of the Arbitral process
- Management of Arbitral Process
- Determining the period of Arbitral Award issuance
- Expert Referral

Here, I would like to point out that the opponents do not intervene with the Arbitration Actions, and they have nothing to do with them, especially, such those related to the execution of Law including: Issuance of temporary and conservative decisions, and the Execution of Justice Principles such as Confronting the Opponents principle, Equality between opponents principle, and Respect for Defense Rights. Here, there is a question arises: the role of the Parties Will about the freedom to choose the applicable Procedural Rules on the International Arbitration Actions whether if it was such rules which approved by a Law of a particular State or Arbitration Center, or made by the contractors themselves? The problem of such question that the Saudi legislator has authorized to the parties the freedom to subject the relationship to any International Agreement or Document Awards or the

Regulations of Arbitration Center,
which the Article (5) of Saudi Arbitral Law decides that: " If the two arbitral parties agreed on subjecting the relationship between them to the Awards of any document (Typical Contract or an International Agreement or others, the Provisions of such document shall be taken including Special Arbitration Awards, so as not to infringe the Provisions of Islamic Sharia. It is the same approved Award in Article (19) of UNCITRAL Model Law on International commercial Arbitration in 1985 Calendar, which decides that: "According to the provisions of such law, the two parties have the freedom to agree on the Awards that the Arbitral Tribunal shall follow it up when proceeding with the arbitration, if there is not such agreement, according to the Awards of such Law, the Arbitral Tribunal has the right to proceed in arbitration in the manner which it deems appropriate, including the vested authority of the Arbitral Tribunal to decide on the admissibility of the Provided Evidences and its relevance to the subject, its feasibility, and its importance."

9. The Commencement Date of Arbitration Actions

This organized by the Article (26) of the Saudi Arbitration Law which decides that: "The Arbitration Actions commence from the day on which one of the parties receives an Arbitral Request from the other Party, unless the parties to the arbitration agree on that."
Such article showed two principles: first, the arbitration procedures commencesthe day on which one of the parties receives the arbitration request from its litigant, and secondly, the parties may set another date for commencement of arbitration proceedings, which is the same provision prescribed in article (21) of the UNCITRAL Model Law on International Commercial Arbitration 1985, which states that: "Arbitration proceedings shall commence in a dispute on the day on which the respondent receives a request to refer that dispute to arbitration, unless otherwise agreed by the parties."

10. The Rule of Equality between the Opponents

The Article (27) of Saudi Arbitral Law decides that:" Each of the Parties shall be treated equally, and full & equal opportunities shall be created for both of them to provide his case or defense."
Subject to this Article, the Arbitral Tribunal is abide, during proceeding with arbitration, to treat both of the Arbitration Parties equally, and such Award itself was approved by the Article (18) of UNCITRAL Model Law of Commercial Arbitration which decides that:" Both Parties shall be treated equally, and full opportunity shall be created for both of them to provide his case"
And it has been indicated by the Article (13) of Obligations of International Lawyers which approved by United Nations in 1992 Calendar, and foremost:

A) Advise the clients in respect of their Rights, Legal Obligations, and about Style of Legal System and its relevance to the rights and Legal Obligations for the Clients.
B) Assisting their Clients in all appropriate ways, and adopting the Legal Procedures to protect their interests.
C) Assisting their Clients front of all types of Courts and for the Administrative Authorities as Requirement.

11. The Invalidity of the Arbitration Award

The Article (50) of Arbitration Law has treated such an invalidity which decides that:

1. The Case of the Invalidity of the Arbitration Award is not accepted, except in the following cases:
   - If there is no such an Arbitration Agreement or that agreement was invalid, or revocable, or be waived by the end of its term.
   - If one of the Arbitral parties at the time of the Contract Conclusion was incompetent or an incapacitated person in accordance to the Law that governs his eligibility.
   - If it is not possible to one of the Arbitral Parties to provide his defense because of non-correct reporting by hiring an arbitrator or by Arbitration Actions, or for any reason beyond his control.
   - If The Arbitration Award excluded the application of any Regulation Rules which the Arbitral Parties have agreed on its application on the Subject of the Dispute.
   - If the Arbitral Tribunal is formed or the Arbitrators are hired in contravention of such Law or of the agreement of the Parties.
   - If the Arbitration award adjudges on the dispute, and the Arbitration Agreement not included within it, however, If possible to adjudge on the dispute of the Special Award, the Invalidity shall not fall except on the non-subject parties for the arbitration alone.
   - If the Arbitral Tribunal did not consider the conditions that must be met with the Award that affecting on its content, or the Award based on false Arbitration Actions that affected on it.
2. The Competent Court which rules the Invalidity Case by itself to carry out the Invalidity of the Arbitration Award if included an opposition to the Islamic Sharia Provisions and the Public Law in the Kingdom or as agreed by the parties to the Arbitration, or if there was a Subject of a Dispute Case which the Arbitration

shall not be permitted under such Law.

3. The Arbitration Agreement shall not be expired by the issuance of the Award of the Competent Court with the Invalidity of Arbitration Awards, unless the both parties have agreed on that, or an Award was issued to invalidate the Arbitration Agreement.
4. The Competent Court shall consider the Invalidity Case at the referred cases at this Article, without looking into facts and Matter of Dispute."

This Clause is in accordance to the Article (36) of UNCITRAL Model Law of 1985 Calendar, and both of them are in accordance to the Article (5) of New York Convention of 1958 Calendar which decides the followings:

(1) The Acknowledge & The Execution Award shall not be denial upon the request of the opponent which judged by him expect if such opponent provided to the vested authority to the country that required the acknowledgement & the implementation of the manual on:
   (A) The parties to the agreement as provided in the Article (2) were in accordance with the Law to which applied to them the incompetent applies, or the mentioned agreement is untrue in accordance with the Law to which the parties have subjected it or when the clause is not provided in accordance with the Country Law where the provision was pronounced.
   (B) The opponent to be executed has made a false declaration of the appointment of the Arbitrator or of the Arbitration Actions or is otherwise impossible for him to submit his Defense for another reason.
   (C) The Award of adjudicate upon the dispute is not included in the Arbitration Agreement or in the contract of Arbitration or beyond their limits as judged, however, part of the Award shall be acknowledged and executed which is subjected to the settlement by Arbitration, if it is possible to separate it from the remaining parts of the Award that is not agreed to be dissolved in such way.
   (D) The Arbitral Tribunal or Arbitration Actions shall be formed to be against to the agreements of the parties or the Law of the country which the Arbitration was made in case of disagreement.
   (E) The Award has not become binding on the opponents, canceled or suspended by the Competent Authority in the country therein or under its Law, the Award was issued.

(2) The Competent Authority in the country requested for the acknowledge and execution of Arbitrators Award to deny the Acknowledgement & Execution if it finds that:
   (A) That Law of such country does not permit the Adjudication on the Dispute through Arbitration or
   (B) The acknowledgment of the Arbitrators Award or execution is against to the Public Law of the Country.

And so the Article (10) of the American Federal Arbitration Law issued on 1925 Calendar which decides that: "The USA Federal Court within its scope of the Award Issuance, upon the request of one of parties to Arbitration, to invalid the Arbitration Award in the following cases:

(A) If the Arbitration Award is obtained by bribery, fraud or any illegal method.
(B) If the Arbitrators or one of them is clearly non-neutral or corrupt.
(C) If there is an error in the disposal of the Arbitrators by refusing to postpone the discussions even though there is a legitimate reason or to reject the corroborating Evidences related to the dispute or if they commit any other error in the disposal of the rights of any party.
(D) If the Arbitrators exceed their powers or did not do their job as they should, or they did not issue a final irrevocable Arbitration Award in the dispute referred to them.
(E) In case of the Invalidity of Arbitration Award, and if the contractual period for issuing the Arbitral Award does not expire, the court may it deems as appropriate, decide that the dispute be referred to the Arbitrators for further review.

12. The Date of filing a case for invalidation of the arbitration award and its procedures,

Article (51) of Saudi Arbitration Law showed it which decides that:

1. The case of invalidation of the Award shall be filed by either of its parties within 60days following the date if notifying the party of the Award, and the waiver by Plaintiff invalidity shall not preclude his right to arise it before the issuance of Arbitration Award without the admissibility of a case.
2. If the Competent Court ruled upholds the Arbitration Award, it would judge its execution, and its ruling in such case is not subject to appeal by any of the methods of appeal, but if it rules the invalidity of the Arbitration Award, its ruling may be rebuttable within thirty days form he day following the notification."

And it is the same clause of Article (12) of Federal American Commercial Arbitration Act issued on 1925 Calendar which decided that: " A request for nullity, amendment or correction of the Arbitration Award shall be notified to the opposing party or his Lawyer within three months which it is following deposit or notification of the Arbitration Award. If the opposing party is a resident of the territory when the Arbitration Award has been issued, such party or his Lawyer shall be notified with the conditions provided by the Law to be notified by the

summons with the cases which provided in front of the same court. If the opposing is not a resident, the request shall be notified by the competent authority of the territory where the opposing party resides and in the same way as any other cases, as for any judge may decide to suspend the case in front of the same court if it deems it necessary of the request. An order is issued on its behalf, including the notification of the request in which the request for execution of the Arbitration Award made by the opposing party shall be suspended.

13. The Entity in charge of issuing the order to execute the Arbitration Award, and the required papers for such an Execution.

Article (53) of Saudi Arbitration Law has sowed them which decides that: " The Competent Court or is its representative shall issue an order to execute the Arbitrators Award, and the Award Execution request shall be provided to him as follows:

1. The Original of the Award or a certified copy thereof.
2. A certified true copy of the Arbitration Agreement.
3. Translation of the Arbitration Award into Arabic that shall be certified by accredited entity, if it is issued in another language.
4. An Evidence for the filing of the Award with the Competent Court in accordance with Article (44) of this Law.

Corresponding to the Article (13) of the American Federal Act issued on 1925 decides that: "The party who requested an order assuring, modifying, or correcting the Arbitration Award when depositing the Arbitration Award in the Registry for its authentication shall submit the following documents to the Registry:

(A) The Arbitral Contract and, if necessary. To choose or hire an additional arbitrator or a third Arbitrator and any extension written to the time limit of issuing the Arbitration Award.
(B) The Arbitration Award.
(C) Any Notification, statement, or other document shall support his/her request of assuring, or amendment, or correction of the Arbitration Award and a copy of any court order related to such demand.

The Award shall be registered as if it had been issued of a normal case.

Such an Authoritative Award shall have the same force and effect as the issued Award in an ordinary case and subject to the same Legal Awards. It shall be executed as if it had been issued of a normal case in front of the Court which had authenticated it."

Fourth: The Saudi Arbitration Law's Aspects which don't influence by the International Agreements.

In spite of the agreeing of Saudi Arbitration Law with the most of the international arbitration agreements and laws, there are some points which aren't mentioned in the arbitration law by Saudi lawgiver.

For example:

- **The arbitration notification**

This notification is stated by article (6) of the arbitration law, as it states that:

1. Unless there's a special agreement between the parties of the arbitration in respect of the reports, reports shall be delivered personally to the receiver – or the person who act on his behalf – or sent to his postal address defined in the contract under consideration of this conflict, in the arbitration clause or in the document organizing the relationship discussed by the arbitration.
2. If the report delivery to the sender is difficult according to paragraph (1), delivery shall be deemed performed if the report is sent by letter registered by acknowledgement of receipt to the last working place, usual residence place or postal address known to the receiver.
3. Provisions of this article aren't valid with the judicial reports in respect of the nullity of the arbitration decision before courts.

That article processes the state of the parties' non-agreeing on the procedures and ways of delivering reports, correspondences, and letters in respect of the arbitration process aiming to the fast delivery away of the papers of the summons servers, as the lawgiver made the latter relate only to the reports of the court ruling of the arbitral award nullity. As well as they are useful in the following:

* Reports shall be delivered to the receiver by his postal address mentioned in the contract resulting in the conflict, address mentioned in the arbitration agreement or in the arbitration clause.
* If the report delivery to the receiver according to the paragraph by any of the above stated addresses is difficult, delivery shall be deemed performed if the report is sent by a letter registered by acknowledgement of receipt to the last working place, usual residence place or postal address known to the receiver.

As well as this text confirms that the lawgiver has forgotten the possibility of exchanging the correspondence among the opponents by the modern communication ways mentioned in the electronic transactions system issued as per the honorable royal decree No. m/18 on 08/03/1428 H. on the contrary, article (2) of the Modified Exemplary Onestral Law in 2010, which states the following:

1. Notification may be sent, involving notification, letter or suggestion, by any communication way, which provide a record of sending the same or make it available for this record to be provided.

2. If a party determines an address for this purpose in particular or the arbitration authority gives the permission of this address, any notification shall be delivered to that party in such address, and the notification shall be deemed delivered if it's delivered in this way. The notification shan't be delivered by electronic ways such as fax machine or e-mail except to a particular address or permitted address as previously stated.
3. If this address isn't defined or permitted, any notification shall be deemed:
   (A) Delivered if delivered personally to the receiver.
   (B) As delivered if it is delivered in the receiver's working place, his usual residence place or his postal address.

2- Matter of the previous certification of the arbitration deed by the court competent with hearing of the conflict

Saudi lawgiver didn't refer, in the current arbitration law, to the power of the court competent with the certification of the document of the disposition of the conflicts by the way of arbitration on the contrary to the text of article (6) of the cancelled arbitration law /No. m/46, date 12/7/1403 H which states that: "The authority competent originally with the disposition of the conflict shall assume the registration of the arbitration requests submitted to it and make a decision of the certification of the arbitration document.", as well as article (7) of its executive regulation which stated that : "Authority competent originally with the disposition of the conflict shall make a decision of certifying the arbitration document within 15 days and to notify the arbitration body of its decision."

That cancelled text agree with the text of article (2/3) of New York Agreement of the year 1958, which states that: "the contracting state court which receive a conflict about a subject which has been agreed upon by the parties in the same meaning mentioned in this article shall refer the litigants, pursuant to the request of one of them, to the arbitration unless the court assures that the agreement is cancelled, null or not applicable."

As it agrees with some jurisprudent approaches that believe in the necessity of submitting the arbitration agreement firstly to justice to put an end to the phenomenon of the non execution of the arbitral awards and the nullity claims. In other words, the arbitration procedures don't start before the court certifies this agreement and approve it. In this way, an arbitration depends on null agreement is avoided, and the judgment of the nullity of this arbitration is more likely after the parties disburse expensive expenditures, and waste much time, while the challenge of nullity on the arbitral award will be executed in this case only after delivering the judgment itself, and one of the challenge reasons shall be provided by such judgment.

This opinion protect the parties from the nullity of the arbitral award which discusses points that aren't disputable, the American lawgiver paid attention to them when he decided in article (11) of the Federal American Code of the Trading Arbitration issued in 1925 G that: "the competent federal American court in which field the issuance place of the arbitration exists is allowed, pursuant to the request of one of the parties, to order to modify or correct the arbitral award in following cases:

A) If an evident mistake happened in the accounts or a material shameful mistake happened in the description of a person, thing or money referred to in the arbitral award.
B) If the arbitrators judge in a point that isn't shown to them, except if it is proved that such point doesn't influence on the basic decision in respect of the matters shown to them.
C) If the arbitral award is incorrect in the shape without any influence on the main conflict.

The court is allowed to amend or correct the arbitral award in the shape which keep its purposes and ensure the justice among the parties. "

- **Impartiality of Arbitrators**

Saudi legislator didn't include the arbitrators' commitment to mention the matters which influence their impartiality, and kept restricted on their commitment to mention the matters which affect on their neutrality and independence, as article (16) states the following:

1- Arbitrator shan't have any interest in the conflict , and he shall, since his employment and during the arbitration procedures, state, in writing, to the parties of the arbitration that all conditions which may arise doubts have their reasons in respect of his impartiality and independence unless he has previously informed them with such conditions.
2- Arbitrator shall be forbidden to hear the case – even if a part of the arbitration requests that – in the same cases which judge is forbidden to hear the case.
3- It is allowed to return the arbitrators only if there are specific conditions which arise actual suspicions in respect of his impartiality and independence, or didn't obtain qualifications agreed by the parties of the arbitration, as mentioned in article (14) of this law."

On the contrary, clause (2/d) of the guiding principles of the International Bar Association which states that: "There are justified suspicions about the impartiality of the arbitrator in case he establish a relationship with one of the parties, he is a legal attorney to a legal entity which is a party of the conflict or he has a financial or personal interest, as well as Onsetral principles and the Arbitration Institute of Stockholm Chamber of Commerce requires explicitly from the arbitrators to be honest. Article (14/1) of Investment Conflict Settlement

Agreement states that: The arbitrators shall be characterized with good morals. as well as the first article of the English Code in 1996 which states that the arbitration subject matter is:
"The issuance of a fair decision in the conflicts by a neutral court without unnecessary delay "which is the same provision mentioned in chapter 8 of the Swedish arbitration law and article (10) of the US Federal law relating to international arbitration (FAA) in 1925 which states the following:
"US federal court in which field the arbitral award issuance place is allowed, pursuant to the request of one of the parties, to cancel the arbitral award in the following cases:

A) If the arbitral award is obtained by bribe, cheating or any illegal method.
B) If the arbitrators or any of them is obviously not neutral or bribe.
C) If the arbitrators misbehave by refusing the postponement although there is a legal reason, by refusing the evidences relating to the conflict or commit any other mistake in behavior that may influence the rights of any party.
D) If the arbitrators exceed their powers or don't duly perform their missions and don't deliver a fair, final and not debatable arbitral award relating the conflict referred to them.
E) In case of the cancellation of the arbitral award and the contractual term of issuing the arbitral award doesn't decrease, the court is allowed, if it sees that proper, to order to refer the conflict to the arbitrators to review it again.

As well as the arbitral award of New York City stated that: "if it is proved to the court that this party's rights move away of impartiality, the plaintiff shall bear the responsibility of proving the prejudice of the arbitrator, and he has the right to claim preventing him from the reward."

However, the condition of the arbitrator impartiality relates to his mental status and it is sometimes shown by a behavior that indicates the arbitrator prejudice towards a party or against the other party. Some may think so for reasons that have no relation to a caused decision in the subject matter of the case. For instance, being affected by a particular profession or business, or a personal relationship that may result in the reasonable belief that the arbitrator is unfair, or that persons belonging to a particular nationality or ethnic minority are liars. Some see that the actual prejudice is rare occurrence and difficult to prove in the international commercial arbitration, except if the arbitrator has previously declared that he is unfair by any way of expressing will as if he states his opinion of the case or behave as a counsel of any of the parties. Some others see that the difficulty of the prejudice determination emerges in the context of the tripartite arbitration as two arbitrators are chosen out of three arbitrators by the two parties. The role of the arbitrators designated by the parties contains ambiguity, despite they are members of the court authority, and they are allowed to be capable of the disposition of the cases for the favor of the parties who appoint them. While some others see that the condition of "impartiality" can be obtained from the morals including the sole arbitrator or the boss's nationality and some others see that the condition of "the impartiality" of the arbitrators in most of the cases subject to the duty of the disclosure to the parties. In the case of claims between Iran and USA, one of the arbitrators intended to resign and pretended that he previously accused Iran of conviction.

- **The execution of the arbitral award:**

The lawgiver determined in article (55m/2) of the Arbitration Law the conditions of the arbitral awards when he states the following: "it's allowed to order the execution of the arbitral award pursuant to this law only after the verifying from the following:

* It doesn't conflict with a judgment or decision issued from a court, committee or authority which has the entitlement of the disposition in the conflict in KSA.
* It doesn't involve principles which contravenes to Islamic Sharia rules and the general law of the Kingdom. If it's possible to divide the judgment in respect of the involved violation, it will be legal to execute the remaining not contravening part.
* It has been informed correctly to the judgment debtor.

In several points of view, this text such text opposes the text of Article (3) of the New York Agreement on 1958 Calendar , which decides that: " All of the contracting countries shall acknowledge the Arbitration Award and order its execution in accordance to the Pleadings Law which established in the Requested territory to be executed and in accordance to the Approved Conditions of the following Awards. The Acknowledgment or the Execution of the Arbitrators Awards shall not be imposed which the Awards of the current Agreement shall be subjected to more severe Conditions or Judicial Fees which significantly higher than of those imposed for the Acknowledgment and Execution of the of the Awards of National Arbitrators."
The Difference is that the Condition of Saudi Legislator shall not oppose the Awards of Islamic Shariah and the Public Law in the Kingdom, whether the contravention related to the Subject or to the Actions.
There is no real disagreement with the New York Agreement, on the contrary the second paragraph of Article (55) was more flexible than the New York Agreement, for many reasons, summarized as follows:

* That the Second Paragraph of Article (5) of the New York Agreement decides that: "The Competent Authority of the country that requested the acknowledgment & Execution of the Award of the Arbitrators to

refuse the Acknowledgment & Execution if it finds that" :

(A) The Law of such country shall not permit the Adjudication on the dispute through the Arbitration or

(B) That the Acknowledgment and Execution of the Arbitrators Award shall oppose the Public Law of such country.

Under the Article (48) of the Saudi Arbitration Law No. 90/A, on 27/8/1412H, the Awards of the Public Law are the same as the Provisions of Islamic Shariah, which decides that: "The Courts shall apply the Provisions of Islamic Shariah on the presented Cases before it according to the Quran, the Sunnah, and regulations issued by the ruler shall not oppose to the Quran & the Sunnah".

This means that there is no such disagreement between what it is provided in the New York Agreement and the Current Saudi Arbitration Law.

* On the contrary, the Article (2/5) of the New York Agreement was rigid, because it permits a country to execute the Foreign Arbitration Awards, to refrain the execution of them if they oppose the Prevailing Public Law in the Execution Country, while the Ending of the Article (2/X55) of the Current Saudi Arbitration Law permits the defragment of the execution of the Arbitration Award which opposes the Public Law, that is, it permitted the execution of the remaining non-opposing part.

The Conclusion

The new Regulation, which is provided in the Current Saudi Arbitration Law No. (43/X) on 24/5/1433H, is undoubtedly a qualitative leap which greatly contributes to the Activation of the Foreign Investment Law No. 1/X on 5/1/1421H, and encouraging and the flow of more foreign Investments in the Saudi Market which have already has a major role in the Global Market Competition in accordance with its true role in the Millions of Muslims' Hearts.It has provided investors with an alternative way to settle their disputes arising during the Execution of International Trade Contracts of its various types and purposes, thus, it has removed the various obstacles to the traffic of International goods & Services which pursued by different countries to contribute in achieving of Development Programs, it has also provided the most important Foreign Investment guarantees (FOREIGN INVESTMENT) both direct and indirect, in the same manner as in all countries of the World attracting such investment.

Eventually, I can only offer some recommendations related to such paper, which involves the awareness raising techniques about the importance of Investors to settle their disputes through Arbitration, for example:

- To ensure that the Arbitration Law is reviewed every period, in order to remove the ambiguity that surrounds certain Regulations, in accordance with Global Trends, and for example: meant to be impartial, independence, and integrity of the Arbitrator.
- To take care of the training of workers in the Economic Courts in order to be familiar to the concept of the Arbitration and its importance in the investment boom, it role in reducing the burden on the judges, and identifying the types of assistance that they can provide to the Parties to Arbitral Cases.
- To work on the issuance of Executive Regulations of the Law, for the importance of that for the parties to the Commercial Disputes, Court Judges, Arbitrators, Lawyers, an Agents.
- Holding conferences, seminars and workshops for International Arbitration, with the Participation of Judges, Arbitrators, Lawyers, and Agents working in the field of Adjudication on the Commercial Disputes.

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