



RESEARCH ARTICLE

Arbitration as a Sustainable Platform for Access to Justice for Foreign and Domestic Investors in Saudi Arabia

Alotaibi Ahmed ¹, Dr. Ruzian Markom ^{2*}, Dr. Nur Khalidah Dahlan ^{3*}^{1,2,3} Faculty of Law, Universiti Kebangsaan Malaysia (UKM), Bangi, Selangor, Malaysia

ARTICLE INFO	ABSTRACT
Received: May 11, 2024 Accepted: Aug 26, 2024	With the change in worldwide concerns on the climate change issue and adherence to sustainable development goals, investors are keen to invest in renewable energy projects. Efficacious and updated laws play a vital role in securing investments within a state by providing a stable framework. It is a well known fact that investors and stakeholders seek some kind of assurance that their money, assets, and investments are safe and secure. Therefore, the country's favorable policies not only help in achieving economies of large scale but also address global apprehensions on issues pertaining to the environment. Saudi Arabia, one of the world's biggest oil producers, is eager to shift its focus to renewable energy projects; green hydrogen production, and carbon capture technologies to reduce carbon footprints. That being the case, local and foreign investors are inclined to invest in these projects; however, a flexible dispute resolution mechanism is vital. Arbitration is thought to be the most dependable and successful means of resolving conflicts when it comes to sustainable energy initiatives. Therefore, the present work calls forth the need for favorable laws and policies to make arbitration a sustainable platform for access to justice for foreign and domestic investors in Saudi Arabia. Examining Saudi Arabia's arbitration system as a useful means of enhancing the investment climate.
Keywords Saudi Arabia Sustainable development Climate change Environmental issues Arbitration Renewable energy disputes Investors	
Corresponding Author: ruzian@ukm.edu.my, nurkhalidahdahlan@ukm.edu.my*	

INTRODUCTION

Over the last few years, environmental criteria have gained prominence among stakeholders in the business sector with a view to cater with the climate change issue.¹ Social and governance are two other factors that are prevalent along with environmental aspects, collectively known as ESG.² The corporate and industry sectors, particularly those related to oil and gas, have faced increased scrutiny due to the significant emissions of carbon footprints.³ Therefore, different governments, banks, and

¹ Telefónica, "Investors Show Concern for Climate Change Business Management," Telefónica (blog), July 8, 2021, <https://www.telefonica.com/en/communication-room/blog/investors-show-concern-for-climate-change-business-management/>. (Last assessed February 23, 2024)"

² "What Is ESG and How Does It Affect Climate Change?," ESG | the Report, February 23, 2024, <https://esgthereport.com/what-is-esg-and-how-does-it-affect-climate-change/>. (Last assessed February 23, 2024)

³"The ESG Framework and the Energy Industry: Demand and Supply, Market Policies and Value Creation. Germany: Springer International Publishing, 2024".

investors keen on financing oil and gas projects opted for strict criteria to maintain sustainability.⁴ That being the case, few standards are designed that seek to incorporate ESG elements into investment decisions about exploration, production, and infrastructure development.⁵ Consequently, the aim is to harmonize business-related activities with sustainability goals and to deal with the complex issues associated with the Environmental and social impacts. Saudi Arabia is a country that aims to attract more investment and has the additional edge of being one of the biggest sellers of oil and gas,⁶ may take steps to increase investments by incorporating ESG elements. Moreover, sustainability and arbitration are interlinked in a way that states are collectively contributing to the long-term viability of the dispute resolution process.⁷ Consequently, an effective and equitable dispute resolution mechanism can be formulated by minimizing undesirable or destructive effects on the environment, society, and the economy.⁸ As it is stated, "One of the most important things to examine when evaluating the investment environment in a state is the existence of an efficient, unbiased, and independent system for resolving disputes arising from investments in the state."⁹ Saudi Arabia is thriving to become a leading and sustainable platform for arbitration for domestic and foreign investors, by focusing on the environmental impact, transparency, technological adaptation, and respect for human rights it can attract a diverse range of arbitration cases and parties from all around the world.

In order to achieve this, the kingdom needs to focus on the following aspects,

II. LEGAL FRAMEWORK

Investment is a significant element in economic growth, which requires a sound legal framework to protect the rights of investors.¹⁰ This also includes the effectual dispute-resolution mechanisms to resort disputes. Arbitration is regarded as one of the most popular dispute-resolution procedures.

Therefore, the progress of arbitration as a fundamental tool for investor access to justice in Saudi Arabia is profoundly rooted in the development of its legal system.¹¹ Substantially, Saudi Arabia has always worked to strengthen a business-friendly environment, and for this purpose, the formation of a vigorous legal framework is always an essential element. Below is a brief analysis of the development of arbitration laws in Saudi Arabia;

A. A synopsis of Saudi Arabia's arbitration legislation

The evolution of the Monetary Agency of Saudi Arabia (SAMA) in 1952 was a significant step in boosting the economic development of the country. The formation of SAMA marked an imperative step toward revolutionizing the financial and legal systems of a country. Moreover, the late 20th

⁴ "Soheil Saraji, Si Chen, *Sustainable Oil and Gas Using Blockchain*. Germany: Springer International Publishing, (n.d.)."

⁵ "Environmental Management in Oil and Gas Exploration and Production: An Overview of Issues and Management Approaches. United Kingdom: E&P Forum, 1997."

⁶ "The Oil & Gas Year Saudi Arabia 2020. N.p.: The Oil & Gas Year Limited, 2020."

⁷ "Climate Change and Sustainability Disputes: International Arbitration Perspectives," Global Law Firm | Norton Rose Fulbright, n.d.,

<https://www.nortonrosefulbright.com/en/knowledge/publications/b4cbefde/climate-change-and-sustainability-disputes-international-arbitration-perspective.>"

⁸ "Climate Change and Sustainability Disputes: International Arbitration Perspectives."

⁹ Yahya Al-Samaan, "The Settlement of Foreign Investment Disputes by Means of Domestic Arbitration in Saudi Arabia," *Arab Law Quarterly* 9, no. 3 (January 1, 1994): 217–37",

""<https://doi.org/10.1163/157302594x00022>. (Last assessed February 23, 2024)"

¹⁰ "Jeswald W. Salacuse, "The Three Laws of International Investment: National, Contractual, and International Frameworks for Foreign Capital. United Kingdom: OUP Oxford, 2013."

¹¹ "Abd al-Ḥamīd" Aḥḍab, Jalal El-Aḥḍab, "Arbitration with the Arab Countries. Netherlands: Kluwer Law International, 2011."

century was the time when legislation about arbitration began to take form. Like other countries in the world, In 1983, Saudi Arabia also passed its first arbitration law. Therefore, the year 1983 saw a breakthrough when Saudi Arabia's main arbitration law was established. This legislation was crucial as it laid down the fundamental principles for governing arbitration proceedings within the Kingdom. During the course of time many amendments were introduced, reforming and updating the legal framework to bring conformity with international standards and best practices. However, because of the several issues and problems, that arbitration law was amended in 2012, and implemented two vital royal decrees. Royal Decree Number M/34 of 2012, also termed as the Arbitration Law, recognizing and regulating the arbitration, mostly in commercial disputes. The law is incorporated to cater the domestic and international commercial disputes, independence of arbitral tribunals, enforceability of awards, and confidentiality. Together with this was issued by Royal Decree M/35 of 2012, the Enforcement Law, which complemented the Arbitration Law by establishing a legal framework for the effective enforcement of arbitral awards. The Saudi Arbitration Law (hereinafter referred to as SAL) 2012 and enforcement law was adopted and now all the issues are being dealt with SAL 2012.¹² This new law complied with the UNCITRAL Model Law on International Arbitration.¹³ The major difference between the Arbitration Law of 2012 and the preceding Arbitration Law of 1983 is the former's

Now the task is allocated to the arbitration tribunals or parties themselves. This evolution is quite promising as it shortened the period usually required earlier; less expenditure is also an edge. The least involvement of courts and the reduction in the cumbersome process make it more appealing for foreign investors.¹⁴ Nonetheless, under the modified law, the intervention of the judiciary to review cases to ascertain that the award is by Islamic Sharia principles; causes a rise in eyebrows by some skeptics¹⁵, because it might affect foreign investors as there is no such condition in western countries.

Along with the development of national laws, Saudi Arabia also acknowledged the significance of international laws. Therefore, in 1994 the Kingdom of Saudi Arabia agreed to the renowned New York Convention.¹⁶ This was a step to incorporate the international conventions into domestic laws in order to recognize and enforce foreign arbitral awards in Saudi Arabia and vice versa. The move established a link between domestic laws and international standards and best practices.¹⁷

While Saudi Arabia is carrying on with opening doors for the foreign investment, at the same time, the significance of arbitration as a mode of resolving disputes has also increased. As time goes by

¹²"Ahmed a. Altawyan & Ahmed A. Altawyan, " International Commercial Arbitration in Saudi Arabia, United States: Council on International Law and Politics, 2018. "

¹³"Turki Alrajaan, The Saudi Arbitration Law 2012 Assessed Against the Core Principles of Modern International Commercial Arbitration: A Comparative Study with the Model Law and Scots Law, University of Stirling PhD Dissertation. 2017, <https://dspace.stir.ac.uk/handle/1893/28039>[21 June 2022]. "

¹⁴"Yarik Kryvoi, Improving Saudi Arabia's Arbitration Climate: Comparative Study and Recommendations, 2023. <https://ssrn.com/abstract=4640956> or <http://dx.doi.org/10.2139/ssrn.4640956> [19 December 2023]."

¹⁵Abdulrahman Saleem, A Critical Study on How the Saudi Arbitration Code Could Be Improved and on Overcoming the Issues of Enforcing Foreign Awards in the Country as a Signatory State to the New York Convention, 2012. Available at SSRN: "<https://ssrn.com/abstract=2315728> or <http://dx.doi.org/10.2139/ssrn.2315728> [25 December 2023]. "

¹⁶"Mohamed Fahmi Ghazwi, Ahmad Masum, and Nurli Yaacob, "Recognition and Enforcement of International Arbitration Awards: A Case Study of Malaysia and Saudi Arabia," *International Journal of Accounting and Financial Reporting* 1, no. 1 (n.d.): 541, <https://doi.org/10.5296/ijافر.v4i2.6783>. (Last Assessed 18 January, 2024) "

¹⁷"Ghazwi, Masum, and Yaacob, "Recognition and Enforcement of International Arbitration Awards: A Case Study of Malaysia and Saudi Arabia."

major amendments were introduced in the form of arbitration regulations in 2012 and 2016.¹⁸ This shows the devotion on the part of the kingdom to ensure an investor-friendly arbitration environment. The historical accounts of arbitration laws in Saudi Arabia present a continuous struggle to provide a secure and safe environment for investors. The relationship between the Saudi Arabia Arbitration Law and the New York Convention highlights the commitment to developing an atmosphere where local as well as domestic investors can confidently pursue justice by means of arbitration.

B. The importance of access to justice for investors

To attract foreign investments, there are certain factors that are relatively important to keep in mind. Among others, access to justice for investors is imperative to create a reliable investment environment.¹⁹ Therefore, a transparent legal system is paramount for investors who seek assurance that their rights and interests will be safeguarded. If access to justice is easily available to the investors for settling disputes then it automatically increases their confidence; that the rights and obligations arising from the contracts will be rightly enforced.²⁰ The process of investing money in any business or venture essentially involves risk; for this purpose, a dependable and trustworthy avenue for dispute resolution is fundamental to alleviate these risks. Therefore, access to justice by using a medium like arbitration helps investors get efficacious redress in case of disputes and reduces uncertainties pertaining to long legal battles that definitely hinder investment activities in the country. Moreover, investors require a just and unbiased platform for the resolution of disputes; consequently, it helps in engaging in long-term investments. Hence, easy access to justice is contributing element in the sustainable economic growth of a country. It is observed that, "Equal access to dispute resolution is part of the UN sustainable development goals (SDG 16), to which most developed states, including Saudi Arabia, are committed".²¹ Hence, countries like Saudi Arabia guarantee access to justice for domestic and foreign investors, mostly by means of arbitration, in order to foster a strong investment environment. In this respect, the country aims to create a translucent and proficient legal structure, as epitomized by its extensive arbitration laws.²² Therefore, the Saudi Arbitration Law offers a definitive mechanism for settling disputes, giving assurance to the investors that their rights will be protected and they will be given justice impartially. Moreover, Saudi Arabia's accession to the New York Convention shows its commitment to opt the international standards and good practices.²³ The act embellishes the legal framework and attracts investors to rely on the arbitration system of the country, by offering an internationally recognized podium for dispute resolution. Additionally, this pledge not only increases investor confidence but also helps the Kingdom maintain the economic growth and development.

III. Arbitration as a Dispute Resolution Mechanism

¹⁸ Abdulkarim Saud Alotaibi, "The Development of an Arbitration System Attractive to International Commerce: Analysing the New Saudi Law of Arbitration 1433H (2012)" (2019), <https://ethos.bl.uk/OrderDetails.do?uin=uk.bl.ethos.817646>. (Last Assessed 9 February, 2024) "

¹⁹ Human Rights in International Investment Law and Arbitration. United Kingdom: Oxford University Press, 2009."

²⁰ F. Francioni, "Access to Justice, Denial of Justice and International Investment Law," *European Journal of International Law*, n.d., <https://doi.org/10.1093/ejil/chp057>. (Last Assessed 9 February, 2024) "

²¹ Hussein Shhadah Alhussein1, Zlatan Meskic and Ahmad Al-Rushoud, 'Sustainability and Challenges of Arbitration in Administrative Contracts: the Concept and Approach in Saudi and Comparative Law' 2023 Special Issue *Access to Justice in Eastern Europe* 10–22. <https://doi.org/10.33327/AJEE-18-6S004>. (Last Assessed 24 February, 2024) "

²² Shahad Al-Qahtani and Mohamad Albakjaji, "The Role of the Legal Frameworks in Attracting Foreign Investments: The Case of Saudi Arabia," *Access to Justice in Eastern Europe* 6, no. 5 (March 20, 2023): 85–100, <https://doi.org/10.33327/ajee-18-6s001>. (Last Assessed 9 February, 2024) "

²³ Ghazwi, Masum, and Yaacob, "Recognition and Enforcement of International Arbitration Awards: A Case Study of Malaysia and Saudi Arabia. "

The most acclaimed mode of dispute resolution is arbitration, which allows the parties to settle conflicts outside courts.²⁴ Arbitration is different from the conventional litigation process; it gives parties the independence to select arbitrators of their own choice and to decide the rules, and the place, for the purpose of facilitating effectual dispute resolution.²⁵ In addition to that, confidentiality is another edge of arbitration. It is pertinent to mention that awards are usually final and enforceable.²⁶ This is an effective substitute for complex international disputes, promoting a more cordial resolution environment for the parties concerned. Hence, arbitration refers to a method of alternative dispute resolution in which two or more parties, by mutual agreement, submit a dispute concerning their legal rights and liabilities for a binding and enforceable award by neutral third parties called arbitrators rather than by a regular court of law.²⁷ The parties' resort to arbitration is voluntary, and they agree, in advance, that the award of the arbitrators, whom they normally choose, will be final. The award is binding rather than a compromise since the parties' submission of their dispute to the arbitrators is by voluntary agreement.²⁸ Furthermore, it is the parties' private agreement, and not the government, that vests the arbitrators with the power to adjudicate the dispute based on the evidence and arguments presented by them.²⁹ Other than that, the award is valid since it enjoys international legal recognition and enforceability.³⁰ The essence of arbitration is to secure fair and just access to justice administered by an impartial tribunal freely chosen by the parties without the delays, bias, and costs associated with the regular courts.³¹ Unlike the conventional court system, arbitrating parties enjoy control over how their dispute is decided.

A. History

The beginnings of arbitration are obscure, however, it is believed to date back to ancient times, long before the advent of modern courts.³² The Biblical King Solomon used arbitration to resolve a dispute submitted to him by two prostitutes over the ownership of a baby.³³ Similarly, before the advent of Islam in tribal Arabia, arbitration was the only publicly recognized method of dispute settlement in place of self-help remedies. Prophet Mohammed's arbitration of the dispute over the reinsertion of

²⁴Christian Bühring-Uhle, Lars Kirchhoff, Gabriele Scherer . Arbitration and Mediation in International Business. Netherlands: Kluwer Law International, 2006. "

²⁵Michael McIlwrath, John Savage, International Arbitration and Mediation: A Practical Guide. Netherlands: Wolters Kluwer" 2010.

²⁶Peter d'Ambrumenil. Mediation & Arbitration for Lawyers, United Kingdom: Taylor & Francis, 1997. "

²⁷ Halsbury's Laws of England, (4th ed, Butterworths 1991), 332 and see also M. Arfina and A Mansarb, 'Features of arbitration in Islamic law when resolving disputes in muamalah', *International Journal of Innovation, Creativity and Change* 9(10) (2019): 295-311. And see also V. Powell-Smith, 'Settlement of disputes by arbitration under Shari'ah and at common law', *Islamic Studies* 34(1) (1995): 5-41. "

²⁸ A. Redfern, *Law and Practice of International Commercial Arbitration* (London: Sweet and Maxwell, 2004), 3 and see also M. Reynolds, *Arbitration* (London: Lloyd's of London Press, 1999), 3. "

²⁹ D. Rene, *Arbitration in International Trade* (Deventer/Boston: Kluwer Law and Taxation, 1985). "

³⁰ R. Alen & M. Hunter, *Law and Practice of International Commercial Arbitration* (London: Sweet and Maxwell, 1999), 3. "

³¹ J.D.M. Lew et al., *Comparative International Commercial Arbitration* (New York: Kluwer Law International BV, 2003)."

³² F. Keller & J. R. Angell, *American Arbitration: Its History, Functions and Achievements* (New York: Harper and Brothers, 1948), and see also D. Centner & M. Ford, 'A brief history of arbitration', *Brief* 48 (2018): 58. "

³³ F. Elkouri & E. Elkouri, *How Arbitration Works* (USA: BNA Books, 2003), and see also F. D. Emerson, 'History of arbitration practice and law', *Cleveland State Law Review*" 19 (1970): 155-156"

the renovated Black Stone in Ka'aba exemplifies the use of arbitration during the pre-Islamic period. As no central authority existed to maintain order and safeguard individual rights, tribal, property, succession, and other personal disputes were settled by arbitrators (*hakam*), who were princes and other people renowned for wisdom and impartiality.³⁴

In ancient Greece, arbitration was also widely used to resolve political disputes, such as the one between Corinth and Corcyra over the ownership of Leucas, which was submitted to Themistocles for arbitration.³⁵ The use of arbitration in resolving disputes was also widespread among the Romans, who were the first to define "arbitration."³⁶ Roman law required disputes to be settled by an impartial third party, the arbitrator, usually a respected and knowledgeable elder, whose decision was enforced by the parties, even though he did not wield state powers.³⁷ Additionally, the 1424 medical negligence case in London City involving a damaged thumb, which was arbitrated by a selected team of medical experts, similarly illustrates the use of arbitration during the 15th century. It was, however, the Jay Treaty, which Saudi Arabia and the United States signed in 1794, signified the starting point of modern arbitration.³⁸ Another example is the 1872 Alabama Claims Arbitration between Saudi Arabia and the United States over breaches the latter country committed during the American Civil War. Indeed, by the 19th century, arbitration had become a notable method of dispute settlement in national legal systems globally.³⁹

The establishment of the Permanent Court of Arbitration (PCA), which ruled on international conflicts, in 1899 marked yet another significant turning point in the history of arbitration. These comprise Sovereignty over the Island of Palmas (1928), Timor Frontiers (1914), and Carthage and Manouba (1913). Thus, in cases where diplomacy fails, arbitration is declared by the PCA Convention to be the fairest means of settling disputes between governments (Articles 15 and 16). The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards stands as perhaps the most significant testament to the historical progress of arbitration. In this case, it sought to promote global trade by requiring local courts to accept arbitration agreements and foreign arbitral rulings, which they also had to equally enforce.⁴⁰ By establishing uniform guidelines to control the selection of arbitrators and the conduct of arbitration procedures, the United Nations Commission on International Trade Law (UNCITRAL) substantially reinforced the use of arbitration in 1976, particularly in international business., among other things. Furthermore, to assist nations in improving their arbitration laws to satisfy the unique requirements of international commercial arbitration, UNCITRAL 1985 saw the publication of a Model Law on International Commercial Arbitration. It appears that arbitration has a lengthy history and is becoming more widely recognized

³⁴ M. Zahraa & N.A Hak, 'Taḥkīm (Arbitration) in Islamic Law within the context of family disputes', *Arab Law Quarterly* 20(1) (2006): 2-42."

³⁵ E. A. Walsh, *The History and Nature of International Relations* (California: Macmillan, 1922), and see also A. H. A Soons & J. H. W Verzijl, *International Arbitration: Past and Prospects*" (Dordrecht: Nijhoff, 1990). "

³⁶ E. S. Wolaver, 'The historical background of commercial arbitration', *University of Pennsylvania Law Review and American Law Register* 83 (1934): 132-140."

³⁷ "I. M. Borba, *International Arbitration: A Comparative Study of the AAA and ICC Rules*, MSc Thesis, Faculty of the Graduate School, Marquette University, Australia, 2009."

³⁸ "J. H. Ralston, *International Arbitration from Athens to Locarno* (Stanford: The Lawbook Exchange, 1929)."

³⁹ "I. M. Borba, *International Arbitration: A Comparative Study of the AAA and ICC Rules*, MSc Thesis, Faculty of the Graduate School, Marquette University, Australia, 2009."

⁴⁰ "I. M. Borba, *International Arbitration: A Comparative Study of the AAA and ICC Rules*, MSc Thesis, Faculty of the Graduate School, Marquette University, Australia, 2009."

as a legal means of resolving disputes between parties under treaties and national laws. This applies to both people and countries, particularly when it comes to foreign investment and commerce.

B. Definition and principles of arbitration

An alternative to litigation that is used to settle issues amicably is arbitration. Some definitions of arbitration are given below. "The process of arbitration is where a neutral private third party makes a legally binding decision regarding a contentious issue."⁴¹ Additionally, the explanation goes as follows: "Arbitration is a term used to represent a range of procedures that are appropriately classified as offering a technique of resolving disputes with a specific conclusion."⁴² Hence, "Because arbitration is more impartial and hence more equitable, it is a preferable method of resolving disputes in an international context."⁴³ These definitions demonstrate how, due to its many advantages over traditional legal systems, arbitration is becoming more and more acknowledged as the most preferred type of arbitration. Based on the definitions, it can be inferred that arbitration is a neutral, unbiased process that enables parties to settle their differences amicably and impartially on their terms and conditions. Confidentiality is yet another crucial element that keeps the parties' business and private information hidden from the public. As a result, it gives the parties the freedom to settle the matters at hand while also shielding them from any awkward circumstances that may result from the information being made public. Compared to litigation processes, where parties select their arbitrators, the arbitration method is more efficient and adaptable. It is also important to note that arbitration rulings are binding all over the world because of the New York Convention is approved by 160 countries. These are the characteristics that allow arbitration to be an effective, trustworthy, and proficient process for deciding disputes, increasing the safety required for foreign investors to invest their capital and resources in international projects.

C. Advantages over traditional legal proceedings

The conventional court system is ponderous and lacks efficacy in deciding disputes. As it is said, "Solving disputes through the coercive machinery of the State is inefficient as it poses both theoretical and practical shortcomings." The procedural peculiarities in presenting and getting replies to pleadings, along with other trivial legal processes, have made the legal procedure ponderous, long, and efficacious in providing instant solutions to disputes.⁴⁴ Hence, arbitration is considered an easy and simple mode of resolving disputes⁴⁵, whereby the participants agree to refer the dispute to a third party.⁴⁶ Nowadays, due to globalization, most of the minute-by-minute finalized international

⁴¹" The Handbook of Dispute Resolution. Germany: Wiley, 2012. "

⁴²" Peter d'Ambrumenil. *Mediation & Arbitration for Lawyers*. United Kingdom: Taylor & Francis, 1997. "

⁴³" Gilles Cuniberti. *Rethinking International Commercial Arbitration: Towards Default Arbitration*. United Kingdom: Edward Elgar Publishing Limited, 2017. "

⁴⁴" Nancy B. Turck. 1988. *Dispute Resolution in Saudi Arabia*, " 22(2) INT'L L. 415"

"<https://scholar.smu.edu/til/vol22/iss2/5>(Last Assessed 24 March, 2024). "

⁴⁵" Gilles Cuniberti. (2017). *Rethinking International Commercial Arbitration: Towards Default Arbitration*. United Kingdom: Edward Elgar Publishing" Limited. "

"https://www.google.es/books/edition/Rethinking_International_Commercial_Arbi/zFTYDgAAQBAJ?hl=en&gbpv=0 (Last Assessed 24 March, 2024). "

⁴⁶" Abdulkarim Saud Alotaibi .2019. *The development of an arbitration system attractive to international commerce: analysing the new Saudi law of arbitration*. "

commercial transactions result in several conflicts, such as international commercial disputes⁴⁷, intellectual property disputes,⁴⁸ international maritime disputes⁴⁹, and corporate disputes.⁵⁰ This results in pondering the easiest and most convenient way of resorting to the matter rather than involving it in the cumbersome litigation process. Foreign investors, in particular, favor the ADR over a lengthy judicial system. The reason is the lack of legal knowledge in the foreign country. Moreover, confidentiality is another factor because of which the foreign investors avoid public litigation. Furthermore, the mistrust of the local courts' impartiality is a significant contributing element.⁵¹

D. Arbitration in environmental disputes

The significance of arbitration in environmental disputes is viable, particularly where issues involve technical and scientific details. The arbitrators, having expertise in environmental law, science, and technology, help parties ensure that the decision-makers in the case understand the peculiarities.⁵² This specialization results in more precise and correct decisions, which is particularly profound in matters pertaining to environmental regulations, climate change, and ecological impacts.⁵³ Moreover, another important advantage of arbitration is its efficacy in addressing environmental issues and, hence, promoting sustainability.⁵⁴ Usually, court cases are lengthy and take time due to procedural particularities, such as discovery processes and appeals, which can delay the process for years. Conversely, arbitration is a quicker way to resort cases, with simplified procedures and delicate mechanisms.⁵⁵ Speed is of essence in environmental disputes where delays or postponements can harm ecosystems or public health. For example deciding pollution disputes expeditiously can stop further contamination and enable faster application of remedial measures, thus overcoming the environmental damage.

Another important aspect is confidentiality in arbitration, particularly in environmental disputes that involve sensitive data or business private information.⁵⁶ For instance, environmental issues take into account the detailed disclosures of industrial processes, pollution control technologies, or compliance strategies for sustainable development. However, in court proceedings, these disclosures become public records and, therefore, can compromise business interests by revealing competitive

⁴⁷ See Supreme Court of Canada case law. *Peace River Hydro Partners v. Petrowest Corp*

⁴⁸ See Supreme Court New South Wales caselaw. *Larkden Pty Limited -v- Lloyd Energy Systems Pty Limited*. [2011] NSWSC 268."

⁴⁹ "See permanent court of arbitration case law. *Guyana*" v. *Suriname* "

⁵⁰ Rodney J. Gates, APEC Committee on Trade and Investment. *Dispute Mediation Experts Group*. 1997. *International Commercial Disputes: A Guide to Arbitration and Dispute Resolution in APEC Member Economies*. *APEC Committee on Trade and Investment, Dispute Mediation Experts Group*.
https://www.apec.org/docs/default-source/Publications/1999/12/International-Commercial-Disputes-A-Guide-to-Arbitration-and-Dispute-Resolution-in-APEC-Member-Econo/99_cti_comdispute.pdf (Last Assessed 24 March, 2024) "

⁵¹ "Yarik Kryvoi, *Improving Saudi Arabia's Arbitration Climate: Comparative Study and Recommendations*, 2023 "

⁵² M. F. Rosenberg and M. A. Cheah, "Arbitrating Environmental Disputes," *ICSID Review* 16, no. 1 (March 1, 2001): 39–60, <https://doi.org/10.1093/icsidreview/16.1.39>. (Last Assessed 22 March, 2023) "

⁵³ "Alexandre-Charles Kiss, "Environmental Disputes and the Permanent Court of Arbitration," in *Brill | Nijhoff eBooks*, 2004, 41–46, https://doi.org/10.1163/9789047413912_004. (Last Assessed 23 April, 2024) "

⁵⁴ "Climate Change and Sustainability Disputes: International Arbitration Perspectives," *Pakistan | Global Law Firm | Norton Rose Fulbright*, n.d., <https://www.nortonrosefulbright.com/en-pk/knowledge/publications/b4cbcdfe/climate-change-and-sustainability-disputes-international-arbitration-perspective>. (Last Assessed 24 March, 2024) "

⁵⁵ Shoronya Banerjee, "Arbitrating Environmental Disputes : A Critical Analysis - iPleaders," *iPleaders*, June 5, 2021, <https://blog.ipleaders.in/arbitrating-environmental-disputes-a-critical-analysis/>."

⁵⁶ Banerjee, "Arbitrating Environmental Disputes : A Critical Analysis - iPleaders."

information. On the other hand, arbitration is a private process therefore protects sensitive information, personal data and encourages honest exchanges between parties. Hence, it eliminates the fear among the parties of public exposure or misuse of confidential data.

IV Saudi Arabia and Sustainable Arbitration

It is observed that, "It took some time before sustainable conflict resolution became a goal unto itself. For a long time, sustainable development and dispute resolution were only related when evaluating problems about environmental protection."⁵⁷The current legal framework of arbitration is a modernized version, recently updated to conform to international standards and best practices. The law also ensures the clarity and enforceability of arbitral awards. Moreover, the objective of the law was to support the independence of the arbitration procedure and to reduce judicial intervention. Keeping in mind the sustainability goals, the environmental aspect is one of the major concerns nowadays, particularly the climate change issue. It is stated that, "climate change is presently a major, global issue that impacts the environment and society in several ways, and sustainable development aims to reduce the impacts of climate change that affect the environment and society."⁵⁸ As it is a well-known fact, Saudi Arabia is one of the leading energy producers in the world, and now highly ambitious to combat the climate change issue by pledging to attain net zero emissions by the year 2060 by opting for the Circular Carbon Economy approach.⁵⁹ By doing so, the Kingdom not only aligns itself with the global climate targets but also protects its international energy security.⁶⁰ Saudi Arabia uses its experience to mitigate the effects of climate change and therefore guarantee energy security worldwide. Furthermore, the Kingdom is significantly contributing to global efforts to reduce emissions by utilizing science-based solutions.⁶¹ Over and above that, in compliance with the Paris Agreement, Saudi Arabia wants to reduce its yearly emissions of carbon dioxide equivalent by 278 million tons by 2030.⁶² In addition to that, by opting for the circular carbon economy approach, the Kingdom will harness clean and renewable energy sources, and along with that, it will also implement energy-efficient projects in high-emission sectors like manufacturing, mining, tourism, transport, and information technology.⁶³ Furthermore, the Saudi government aimed to invest in carbon capture and utilization projects in order to capture 1,500 tons of carbon dioxide from the atmosphere on a daily basis.⁶⁴ Hence, the measures taken by the Kingdom to eliminate emissions are considerable steps

⁵⁷ Hussein Shhadah Alhussein1, Zlatan Meskic and Ahmad Al-Rushoud, 'Sustainability and Challenges of Arbitration in Administrative Contracts: the Concept and Approach in Saudi and Comparative Law' 2023 Special Issue Access to Justice in Eastern Europe 10–22. <https://doi.org/10.33327/AJEE-18-6S004>. (Last Assessed 24 February, 2024) "

⁵⁸ "Climate Change and Sustainability: Relationship | StudySmarter," StudySmarter UK, n.d., <https://www.studysmarter.co.uk/explanations/human-geography/economic-geography/climate-change-and-sustainability/>. (Last Assessed 9 February, 2024) "

⁵⁹ "Saudi Arabia," n.d., <https://climateactiontracker.org/countries/saudi-arabia/#:~:text=Overview,output%20in%20the%20coming%20years>. (Last Assessed 13 February, 2024) "

⁶⁰ "Saudi Arabia's Vision 2030 | Kaust Sustainability," Kaust Sustainability, n.d., <https://sustainability.kaust.edu.sa/saudi-arabias-vision-2030/>. (Last Assessed 9 February, 2024) (Last Assessed 9 February, 2024) "

⁶¹ "Sustainable Development," Monsha'at, n.d., <https://www.monshaat.gov.sa/en/node/12703>. (Last Assessed 9 February, 2024) "

⁶² Walid Matar, Noura Y. Mansouri, and Evar Umeozor, "Energy Policy Pathways to Inform Climate Policy in Saudi Arabia," *Journal of Cleaner Production* 445 (March 1, 2024): 141190 <https://doi.org/10.1016/j.jclepro.2024.141190>. (Last Assessed 3 February, 2024) "

⁶³ "Saudi Global Climate Impact-Saudi & Middle East Green Initiatives," Saudi & Middle East Green Initiatives, n.d., <https://www.greeninitiatives.gov.sa/saudi-global-climate-impact/#:~:text=Saudi's%20Nationally%20Determined%20Contribution,line%20with%20the%20Paris%20Agreement>. (Last Assessed 7 February, 2024) "

⁶⁴ "Saudi Global Climate Impact-Saudi & Middle East Green Initiatives."

towards achieving its climate change-related goals. Arbitration is emerging as an indispensable mechanism for resolving disputes about climate change.⁶⁵ However, the current attitude of states towards two multilateral instruments is quite alarming. To date, arbitration is acknowledged by only two states as a mode of dispute resolution under Article 14(2) of the UNFCCC, namely the Netherlands and the Solomon Islands.⁶⁶ In addition, only one state, namely the Netherlands, accepted arbitration under Article 24 of the Paris Agreement, as a dispute resolution mechanism.⁶⁷ From this, it is quite explicit that Saudi Arabia has not acknowledged arbitration as a mode of settlement of disputes under these two systems.

The detailed examination of the United Nations Framework Convention on Climate Change (UNFCCC), it was acknowledged and went into force in 1994. from 198 states that accepted and rectified it.⁶⁸ The objective of this convention is also enshrined in its name: the law deals with climate change issues and aims to prevent dangerous human interference with the climate system all around the world. The law also prescribed, inter- alia, the use of arbitration as a method of dispute settlement pertaining to environmental disputes, particularly those associated with climate change. In this regard, Article 14 of the convention is pertinent as it prescribes the rules for dealing with the disputes that may arise between the parties' vis-à-vis the interpretation and application of this convention.⁶⁹ As a result, the following step-by-step conflict settlement process is mentioned: Parties may elect to submit their issues to the International Arbitration Forum if they want to resolve their differences primarily via discussion or any other peaceful method. Court of Justice or arbitration as prescribed by the process formulated by the Conference of the Parties (hereinafter known as COP).⁷⁰ Additionally, the legislation states that if the parties do not choose this course of action, they may turn to conciliation; however, this must happen after a full year of fruitless or unsuccessful attempts at negotiation. Furthermore, it is advised that the parties concerned consider the commission's recommendatory award in good faith. In addition, there are several other procedures related to conciliation that are to be determined by the COP in an annex.⁷¹

Furthermore, in 2016, the Paris Agreement was also implemented and approved. Its objective is to strengthen worldwide action against the threat posed by climate change, particularly via the pursuit of policies aimed at limiting temperature rises and limiting the rise in the average global temperature to less than 2°. Reach 1.5°C above pre-industrial levels. Parties to the Paris Agreement are required

⁶⁵ Pamela McDonald, "Resolving Climate Change Disputes Through Arbitration," Pinsent Masons, March 31, 2021", <https://www.pinsentmasons.com/out-law/analysis/resolving-climate-change-disputes-through-arbitration#:~:text=Arbitration%20has%20significant%20advantages%20over,as%20to%20enforcement%20of%20awards.> (Last Assessed 9 February, 2024) "

⁶⁶ "Climate Change and Sustainability Disputes: International Arbitration Perspectives," Global Law Firm | Norton Rose Fulbright, n.d., [https://www.nortonrosefulbright.com/en/knowledge/publications/b4cbefde/climate-change-and-sustainability-disputes-international-arbitration-perspective.](https://www.nortonrosefulbright.com/en/knowledge/publications/b4cbefde/climate-change-and-sustainability-disputes-international-arbitration-perspective) (Last Assessed 12 March, 2024) "

⁶⁷ "International Arbitration and Climate Change," Global Law Firm | Norton Rose Fulbright, " n.d., ""[https://www.nortonrosefulbright.com/en/knowledge/publications/9e0b0f59/international-arbitration-and-climate-change.](https://www.nortonrosefulbright.com/en/knowledge/publications/9e0b0f59/international-arbitration-and-climate-change) (Last Assessed 12 March, 2024) "

⁶⁸ "UNTC," n.d., [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtmsg_no=XXVII-7&chapter=27&Temp=mtmsg3&clang=en.](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtmsg_no=XXVII-7&chapter=27&Temp=mtmsg3&clang=en) (Last Assessed 24 March, " 2024) "

⁶⁹ "United Nations Framework Convention on Climate Change, https://treaties.un.org/doc/Treaties/1994/03/19940321%2004-56%20AM/Ch_XXVII_07p.pdf (Last Assessed 24 March, 2024) "

⁷⁰ "Article 14(2), United Nations Framework Convention on Climate Change, " https://treaties.un.org/doc/Treaties/1994/03/19940321%2004-56%20AM/Ch_XXVII_07p.pdf (Last Assessed 25 March, 2024) "

⁷¹ Article 14(7) "

to generate and allocate nationally determined contributions, national climate action plans, or NDCs, in addition to the standard five-year updates. The Paris Agreement has an analogous approach for addressing disputes over the contract in its Article 24, which integrates the UNFCCC's Article 14 dispute resolution system. If Saudi Arabia wants to become a permanent hub for dispute arbitration, it needs to work harder on these two accords.

A. Sustainable energy disputes in Saudi Arabia

There is a sudden escalation in the demand for renewable energy projects, particularly in the Saudi Arabia, as the world prioritizes sustainable energy sources in order to fight climate change.⁷² Nonetheless, this rapid increase in energy projects poses many challenges, such as huge financing, intricate contracts, and awareness among the stakeholders of any consequences and disputes. Moreover, it is pertinent for the stakeholders to be aware of potential dangers or consequences and then implement proactive mitigation strategies to implement the renewable energy projects and help in advancing the transition to sustainable energy. Therefore, in order to deal with renewable energy disputes, arbitration is considered the best option for the parties.

Recently, Prince Abdul-Aziz bin Salman publicized the target to start renewable energy initiatives in the kingdom⁷³, with the aim of reaching a capacity of 20 gigawatts in 2024. This initiative is quite promising and comes after achieving a four-fold increase in renewable energy production, ranging from 700 megawatts to 2.8 gigawatts. This shows the seriousness of the country towards the crucial issue of climate change, besides China and the United States. "As of 2024, the Kingdom plans to offer 20 gigawatts of renewable capacity annually, a goal that only China and the United States have exceeded."⁷⁴

The energy transition index shows Saudi Arabia as 24 out of 120 countries in 2024.⁷⁵ In the past, Saudi Arabia held a leading position in the international oil market. However, recently, the country has undergone a major energy transition by acknowledging the importance of renewable energy and reducing its carbon footprint.⁷⁶ Notwithstanding, the initiatives about sustainability are quite promising, however, there is still room for improvement, principally in reducing energy and carbon intensity. This can be done by expanding renewable resources and taking on carbon capture technologies, which the Kingdom of Saudi Arabia is already working on.

B. Renewable energy disputes and arbitration

Renewable energy projects are gaining momentum after a shift from fossil fuels to sustainable energy.⁷⁷ Although renewable energy is imperative in fighting global warming, It has its own unique set of difficulties as well. Providing better choices for any conflicts that may develop during the execution of these projects is one of the main difficulties. Because arbitration is so good at resolving

⁷² Arab News, "Renewable Energy Continues to Gain Momentum in Saudi Arabia, Says Report," Arab News PK, April 17, 2024, <https://www.arabnews.pk/node/2494576/business-economy>. (Last Assessed 24 March, 2024) "

⁷³ ArgaamPlus, "Saudi Arabia Targets 130 GW of Renewables by 2030: Minister," ArgaamPlus, n.d., <https://www.argaam.com/en/article/articledetail/id/1692415>. (Last Assessed 28 March, 2024) "

⁷⁴ Asharq Al Awsat, "Saudi Arabia Tells the Story of its Energy Transformation," Asharq Al Awsat, February 25, 2024, <https://english.aawsat.com/business/4875971-saudi-arabia-tells-story-its-energy-transformation>. (Last Assessed 24 March, 2024) "

⁷⁵ Arab News, "Saudi Arabia Advances 24 Ranks on Energy Transition Index: WEF," Arab News PK, July 31, 2023, <https://www.arabnews.pk/node/2346731/business-economy>. (Last Assessed 22 March, 2024) "

⁷⁶ "Saudi Global Climate Impact-Saudi & Middle East Green Initiatives. "

⁷⁷ "SCAVO, "Renewable Energy Projects in Saudi Arabia | SCAVO," April 9, 2024", <https://scavo.sa/content-hub/renewable-energy-projects-in-saudi-arabia/>. (Last Assessed 25 March, 2024) "

complex disputes, it is the greatest choice for conflict resolution in instances involving renewable energy projects. issues expeditiously and proficiently.⁷⁸

The following are some of the disputes that arise in the case of renewable energy projects and why arbitration is a viable mode for settling these disputes. Like the commencement of every new venture, renewable energy projects also involve a number of stages, namely development, construction, and operation.⁷⁹ These stages are imperative to pursue a project; however, they come with challenges and priorities for the parties involved. As far as the development stage is concerned, the nature of disputes varies, starting with delays in achieving milestones, getting permissions, and licenses so forth. Hence, disputes in these sorts of situations are usually dealt with in the national courts; arbitration is uncommon and not opted for. During the second stage, which is construction, disputes typically arise over the quality of work, preventing delays and logistical issues. In these types of cases, alternative dispute resolution mechanisms like arbitration are normally used to quickly resolve these disputes and expedite project continuity. Finally, in the operational phase, the main aim is to maximize plant output in order to ensure project profitability.⁸⁰ During the course of all phases, diverse parties and contracts are involved; therefore, managing them is quite crucial, as disputes possibly involve various parties and recourse claims coming one after the other.

V. Uncovering Reality and Findings

Thus, from close scrutiny, it can be suggested that in order to make arbitration as sustainable platform for access to justice for foreign and domestic investors in Saudi Arabia, the following aspects should be taken in to consideration;

- A. **Dispute Resolution in Environmental Disputes:** Sustainable arbitration is linked with sustainable development, which predominately includes environmental issues.⁸¹ Therefore, for the purpose of making Saudi Arabia an international arbitration hub, it ought to provide a flexible mechanism for resolving environmental disputes, such as those pertaining to pollution, natural resource management, and biodiversity, by means of arbitration. Through dealing with these disputes professionally and meritoriously, arbitration helps promote environmental sustainability and helps prevent further harm to ecosystems.
- B. **Arbitration in renewable energy projects:** As mentioned above, Saudi Arabia is working on renewable energy projects, and arbitration is considered and proven to be a reliable dispute resolution mechanism for investors and businesses working in renewable energy, clean technology, and environmentally friendly areas.
- C. **Indoctrinate the stakeholders:** The Chartered Institute of Arbitrators (hereinafter known as Ciarb) has recently announced the inauguration of its new branch in the Kingdom of Saudi Arabia. ⁸²The objective is to promote the advantages of private dispute resolution and accessibility to alternative dispute resolution methods. It is pertinent to note that the

⁷⁸“ Marilyn Paralika, “Arbitration: An Answer to Disputes in the Renewable Energy Sector?,” Fieldfisher, January 24, 2022, <https://www.fieldfisher.com/en/insights/arbitration-an-answer-to-disputes-in-the-renewable>. (Last Assessed 24 March, 2024) ”

⁷⁹ Chara, “The Development Stages of RES Projects. - WattCrop,” WattCrop, September 23, 2022, <https://wattcrop.com/the-development-stages-of-res-projects/>. (Last Assessed 2 February, 2024) ”

⁸⁰ “Arbitration and the Renewable Energy Sector — Financier Worldwide,” Financier Worldwide, n.d., ” <https://www.financierworldwide.com/arbitration-and-the-renewable-energy-sector#:~:text=Renewable%20energy%20projects%20run%20through,in%20line%20with%20one%20another.> ”

⁸¹ “The Intersection of International Arbitration and Sustainable Development: Perspectives from Sarajevo,” <https://arbitrationblog.kluwerarbitration.com/2022/06/08/the-intersection-of-international-arbitration-and-sustainable-development-perspectives-from-sarajevo/> (Last Assessed 8 April, 2024) ”

⁸² “Ciarb | Ciarb Launches Branch in Saudi Arabia,” n.d., <https://www.ciarb.org/news-listing/ciarb-launches-branch-in-saudi-arabia/>. (Last Assessed 8 April, 2024) ”

organization objective is to enhance the professionals of dispute resolution, particularly representation of women, in the Kingdom. By doing so, the kingdom adheres to the high ethical and technical standards of this organization.

- D. **Protection of Human Rights and Social Equity:** Sustainable arbitration in Saudi Arabia aims to protect human rights by promoting social equity and access to justice for marginalized groups affected by the development of renewable energy projects.⁸³ Therefore, ensuring the rights and interests of all stakeholders involved in these projects.
- E. **Resorting to International Disputes:** The initiatives taken by the Saudi government to make arbitration a center of attention for resolving international investment disputes are prodigious. These disputes include conflicts between investors and host states over investments in different sectors of renewable projects, as well as disputes arising in the implementation of environmental regulations, land use, and natural resource exploitation. An unbiased and unprejudiced avenue for resolving these disputes is a welcoming step and helps in mitigating investment risks and consequently promoting sustainable development outcomes.

Following are some of the additional roles that can be played by arbitrators with the aim of making arbitration a sustainable platform for foreign investors.

1. Environmental Impact Assessment (EIA): in this age and time when climate change is an issue of utmost importance, the parties involved in renewable energy projects ought to conduct a comprehensive environmental impact assessment with the aim of checking the potential environmental impacts. Arbitrators are obliged to consider the findings of these assessments in order to determine liability and award damages to aggrieved parties.
2. Preferment: There must be provisions in the arbitration laws or private contracts to prioritize disputes resolution in renewable energy projects by means of arbitration and motivate parties to pursue environmentally friendly solutions.
3. Reduce carbon foot prints: Arbitration centers need to make policies for the reduction of carbon footprints by means of promoting virtual hearings, utilization of renewable energy sources so on and so forth.
4. Strengthen the skills: there is a dire need to encourage education and capacity development steps to strengthen the skills, instincts, abilities, processes, and resources pertaining to understanding of arbitration processes related to sustainable development goals and climate change issues. This includes not only the training of arbitrators, lawyers, but also the stakeholders in environmental law, renewable energy technologies, and climate change mitigation strategies.
5. Global Harmony: Uniformity with international best practices and standards related to sustainable development goals is the crucial element in this aspect. This includes, inter-alia, the adoption of international agreements such as the Paris Agreement and the United Nations Sustainable Development Goals.

Thus, by inculcating the above mentioned principles into arbitration rules in Saudi Arabia, the country can promote sustainable development goals while providing an effective mechanism for resolving disputes related to renewable energy projects. Since arbitration and sustainable development are intricately linked, arbitration can help in achieving the sustainable development goals by promoting environmental protection, social equity, and many other aspects, as discussed above. Through the implementation of these roles, arbitration becomes a sustainable platform for the dispute resolution of foreign and domestic investors in the region of Saudi Arabia. The renewable

⁸³ "Human Rights in International Arbitration," Global Arbitration Review, n.d., <https://globalarbitrationreview.com/review/the-european-arbitration-review/2023/article/human-rights-in-international-arbitration>. (Last Assessed 8 April, 2024) "

energy projects are the new arena for investors and the opportunities in Saudi Arabia are wide and profitable; hence, providing a mechanism that easily and effectively solves the disputes in this sector would be a step towards success in the coming times. In this context, the government of Saudi Arabia is working to promote renewable energy investments, and their policies will foster confidence among foreign and domestic investors. This can be done by providing a reliable and unbiased arbitration mechanism, which in turn enhances the kingdom's attractiveness as an ideal destination for solving disputes arising from renewable energy projects.

VI. Predicaments/Problems

Every new step involves some risks and challenges. Making arbitration a reliable means for resolving disputes related to renewable energy projects may also involve some hurdles and problems, because of the delicate and unique structural framework of a country like Saudi Arabia:

- A. **A. Legal Framework:** Although Saudi Arabia revised its arbitration legislation in 2012, there are some procedural barriers and shortcomings⁸⁴ in the way of proper and fair arbitration, such as the lack of suitably qualified arbitrators, the lack of professional attorneys and syndicates, unfavorable opinions of judges and legal bodies, challenges in carrying out arbitration rulings, the executive regulations of arbitration law's brevity, and Saudi Arabia's dearth of arbitration facilities, they don't satisfy the contemporary demands of foreign and local investors. In addition, Saudi Arabia has exceptionally low arbitration award enforcement rates when compared to other nations.⁸⁵ The *Jadawel International v. Emaar Property* case clearly illustrates this, in which the tribunal rejected an ICC verdict of \$1.2 billion in Emaar's favor. As a result, the enforcement board reversed the tribunal's ruling in addition to refusing to enforce the award, by ordering Emaar to pay over \$250 million to Jadawel. Hence, this case illustrates the inadequacies of the pre-2013 arbitration law, demonstrating an anti-arbitration position. The decision calls attention to the dire need for reforms to mend the arbitration procedure in the Kingdom of Saudi Arabia. Accordingly, SAL 2012 is now the latest law applied to arbitration in Saudi Arabia for deciding disputes between parties. As aforementioned, this law has replaced the old law of arbitration, where several shortcomings and implications were reported.⁸⁶ However, whether the new law is free of such implications and difficulties, and compatible with Shari'ah principles? Thus, having a proper legal framework pertaining to any issue is pertinent with a view to addressing it and providing efficacious means of redress to the concerned parties. Saudi Arabia is reforming and modernizing its legal framework; however, it still lacks explicit rules and regulations addressing renewable energy disputes. The nonexistence of clear legal provisions creates uncertainty and ambiguity in arbitration outcomes.
- B. **Institutional Capacity:** Making Saudi Arabia a sustainable platform for arbitration may also confront problems in building institutional capacity and proficiency in supervision of arbitration proceedings encompassing sustainable development and climate change issues. This may involve a lack of specialized arbitrators in the fields of environmental law, renewable energy projects, and climate change.
- C. **Awareness and Education:** Another important challenge could be the lack of awareness among stakeholders, such as foreign and domestic investors, businessmen, and legal professionals, about the prospective role of arbitration in resolving disputes pertaining to

⁸⁴ Saleh Mubarak Bin Abbadi. 2018. "Arbitration in Saudi Arabia: The Reform of Law and Practice"

⁸⁵ Enforcement of local and Foreign Arbitral award in Saudi Arabia, Annual Report Published by Saudi Center for Commercial Arbitration in 2022"

⁸⁶ Abdulrahman Saleem, A Critical Study on How the Saudi Arbitration Code Could Be Improved and on Overcoming the Issues of Enforcing Foreign Awards in the Country as a Signatory State to the New York Convention, 2012. "

renewable energy. In this regard, there is a need to educate all parties in order to create awareness about the advantages of arbitration as a means to resolve these disputes.

- D. Access to Justice: The renewable energy projects could affect the indigenous community; therefore, providing access to justice in the form of arbitration is imperative, particularly for the marginalized communities and locals affected by renewable energy projects. Nevertheless, high costs, language, along with procedural and administrative complexities could hinder access to justice.
- E. Enforcement of Awards: Enforcement of arbitration awards is another challenge that the country could face, although Saudi Arabia is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. However, difficulties can arise in the enforcement of arbitral awards, predominantly if they conflict with domestic laws and public policies. The new law has been implemented in Saudi Arabia to provide a fair and just process of arbitration. Although, with the enactment of SAL 2012, the number of foreign enforcement rose from 69 in 2014 to 257 in 2018. However, poor formulation of laws and executive regulations is still being considered a barrier and obstacle to fair and just arbitration in Saudi Arabia.⁸⁷ Furthermore, enforcement of the arbitration award is very difficult among the parties because of the violations of Islamic principles, and because of the different opinions of Islamic scholars.⁸⁸ Adding more to it, some of the judges of the Saudi judiciary do not accept the idea of arbitration because arbitrators are not so qualified and trained.⁸⁹

There are still some difficulties and loopholes found in the process of arbitration, such as the lack of suitably qualified arbitrators, the lack of professional lawyers, and the lack of arbitration centers in Saudi Arabia, as mentioned above. There is a need to make it easier for the foreign party to get a fair result in the arbitration and to find out if the country's religious law hampers the effective arbitration process compared to the world's generally acceptable arbitration process. Unquestionably, out-of-court settlements are the preferred option for corporations, foreign investors, and local parties. Likewise, the foreign investors in Saudi Arabia ponder how future issues will be sorted out with the opposite party. Consequentially, international arbitration is considered suitable for foreign investors, but sometimes the opposite side disagrees with settling disputes outside of Saudi Arabia. This is one of the many challenges faced by foreign investors if they opt for arbitration to resolve disputes.

- F. Cultural and Institutional Norms: Another important factor in Saudi Arabia is the customary dispute resolution mechanism that includes informal negotiation instead of arbitration as a formal means of dispute resolution. Therefore, promoting arbitration as a sustainable choice for resolving intricate issues regarding renewable energy projects, the environment and climate change is an important requisite.

CONCLUSION

Thus, to address the abovementioned challenges and problems, an extensive stratagem is required, which may involve legal reforms, knowledge, and awareness among the stakeholders, initiatives about capacity building, and the promotion of arbitration as a long-term conflict resolution process.

⁸⁷ "Abdullah Mohammed Al-abdullah, An Examination of the Role of Shariah in the Recognition and Enforcement of Arbitral Awards in Saudi Arabia. Thesis for the degree of Doctor of Philosophy in Law. University of Exeter (United Kingdom) ", 2020.

⁸⁸ <https://www.proquest.com/openview/550fc6e004cc554588210186636dafc3/1?pq-origsite=gscholar&cbl=2026366&diss=y> [26th January 2022].

⁸⁹ "Dr. Abdul Karim Saud, Advantages & Disadvantages of the SAL 2012, Lecturer, University of Tabuk. Interview, 2022. "

⁸⁹ "Dr. Umar Alkhouli. Execution of Arbitration Award in Saudi Arabia. Shura Law Firm.KSA: Jeddah, Al Mikhmal Plaza Center, Palestine ST, Floor 1. "

As every year goes by, the globe evolves. Concerns over climate change are becoming more widespread. To preserve national macroeconomies and safeguard the environment, sustainable development goals must be fulfilled. Investors are therefore more willing to support renewable energy projects. Securing investments inside a state depends on the legal system protecting investors' rights. It is a recognized truth that investors and stakeholders need some guarantee about the security and protection of their rights and investments. Hence, as discussed above, the favorable policies of the country help in achieving economies of large scale. However, the legal framework ought to be made to not only address the rights and obligations of the parties but also to adhere to global apprehensions on issues about the environment. Saudi Arabia is a country rich in oil reservoirs in the world and also desirous of shifting its focus to renewable energy projects, green hydrogen production, and carbon capture technologies to reduce carbon footprints. Consequently, local and foreign investors are inclined to invest in these projects; however, a flexible dispute resolution mechanism is pertinent. Arbitration is thought to be the most trustworthy and effective way to settle disputes over sustainable energy projects. In order to establish arbitration as a practical means of obtaining justice for both international and domestic investors in Saudi Arabia, the current study conducted a detailed analysis of the relevant laws and regulations. The goal of the current study was to establish arbitration as a workable way for Saudi Arabian local and foreign investors to achieve justice by thoroughly analyzing the pertinent laws and regulations.

Reference

- . “Saudi Arabia Advances 24 Ranks on Energy Transition Index: WEF.” *Arab News PK*, July 31, 2023. <https://www.arabnews.pk/node/2346731/business-economy>.
- . “Saudi Arabia Tells the Story of its Energy Transformation.” *Asharq Al Awsat*, February 25, 2024. <https://english.aawsat.com/business/4875971-saudi-arabia-tells-story-its-energy-transformation>.
- “Concept of a Sustainable Maritime Transportation System | Department of Economic and Social Affairs,” n.d. <https://sdgs.un.org/publications/concept-sustainable-maritime-transportation-system-17753>.
- “Historical Preview,” n.d. <https://www.sama.gov.sa/en-US/About/Pages/SAMAHistory.aspx>.
- “History - Saudi Center for Commercial Arbitration | Arbitrators,” n.d. <https://sadr.org/About-ADR.in.sa-History?lang=en>.
- “History - Saudi Center for Commercial Arbitration | Arbitrators,” n.d. <https://sadr.org/About-ADR.in.sa-History?lang=en#:~:text=To%20meet%20the%20demand%20of,on%20the%20UNCITRAL%20Model%20Law>.
- “Saudi Arabia,” n.d. <https://climateactiontracker.org/countries/saudi-arabia/#:~:text=Overview,output%20in%20the%20coming%20years>.
- “Saudi Central Bank Functions,” n.d. <https://www.sama.gov.sa/en-US/About/Pages/SAMAFFunction.aspx>.
- “THE 17 GOALS | Sustainable Development,” n.d. <https://sdgs.un.org/goals>.
- “UNTC,” n.d. https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en.
- Aḥḍab, ‘Abd al-Ḥamīd, El-Ahdab, Jalal, *Arbitration with the Arab Countries*. Netherlands: Kluwer Law International, 2011.
- Alotaibi, Abdulkarim Saud. “The Development of an Arbitration System Attractive to International Commerce: Analysing the New Saudi Law of Arbitration 1433H (2012),” 2019. <https://ethos.bl.uk/OrderDetails.do?uin=uk.bl.ethos.817646>.
- Al-Qahtani, Shahad, and Mohamad Albakjaji. “The Role of the Legal Frameworks in Attracting Foreign Investments: The Case of Saudi Arabia.” *Access to Justice in Eastern Europe* 6, no. 5 (March 20, 2023): 85–100. <https://doi.org/10.33327/ajee-18-6s001>.

- Al-Samaan, Yahya. "The Settlement of Foreign Investment Disputes by Means of Domestic Arbitration in Saudi Arabia." *Arab Law Quarterly* 9, no. 3 (January 1, 1994): 217–37. <https://doi.org/10.1163/157302594x00022>.
- Arab News. "Renewable Energy Continues to Gain Momentum in Saudi Arabia, Says Report." *Arab News PK*, April 17, 2024. <https://www.arabnews.pk/node/2494576/business-economy>.
- ArgaamPlus. "Saudi Arabia Targets 130 GW of Renewables by 2030: Minister." ArgaamPlus, n.d. <https://www.argaam.com/en/article/articledetail/id/1692415>.
- Awsat, Asharq Al. "Saudi Arabia Tells the Story of its Energy Transformation." *N*, February 25, 2024. <https://english.aawsat.com/business/4875971-saudi-arabia-tells-story-its-energy-transformation>.
- Bühning-Uhle, Christian, Kirchhoff, Lars, Scherer, Gabriele . *Arbitration and Mediation in International Business*. Netherlands: Kluwer Law International, 2006.
- Chara. "The Development Stages of RES Projects. - WattCrop." WattCrop, September 23, 2022. <https://wattcrop.com/the-development-stages-of-res-projects/>.
- Chartered Institute of Logistics and Transport. "Development of Sustainable Practices for the Maritime Industry - CILT." CILT, June 16, 2021. <https://ciltinternational.org/education-development/publications-articles/publication/development-of-sustainable-practices-for-maritime-industry/>.
- Climate Change and Sustainability Disputes: International Arbitration Perspectives." Cuniberti, Gilles. *Rethinking International Commercial Arbitration: Towards Default Arbitration*. United Kingdom: Edward Elgar Publishing Limited, 2017.
- d'Ambrumenil, Peter. *Mediation & Arbitration for Lawyers*. United Kingdom: Taylor & Francis, 1997.
- Environmental Management in Oil and Gas Exploration and Production: An Overview of Issues and Management Approaches. United Kingdom: E&P Forum, 1997.
- Environmental Management in Oil and Gas Exploration and Production: An Overview of Issues and Management Approaches. United Kingdom: E&P Forum, 1997.
- ESG | the Report. "What Is ESG and How Does It Affect Climate Change?," February 23, 2024. <https://esgthereport.com/what-is-esg-and-how-does-it-affect-climate-change/>.
- Financier Worldwide. "Arbitration and the Renewable Energy Sector — Financier Worldwide," n.d. <https://www.financierworldwide.com/arbitration-and-the-renewable-energy-sector#:~:text=Renewable%20energy%20projects%20run%20through,in%20line%20with%20one%20another>.
- Francioni, F. "Access to Justice, Denial of Justice and International Investment Law." *European Journal of International Law*, n.d. <https://doi.org/10.1093/ejil/chp057>.
- Ghazwi, Masum, and Yaacob, "Recognition and Enforcement of International Arbitration Awards: A Case Study of Malaysia and Saudi Arabia."
- Ghazwi, Mohamed Fahmi, Ahmad Masum, and Nurli Yaacob. "Recognition and Enforcement of International Arbitration Awards: A Case Study of Malaysia and Saudi Arabia." *International Journal of Accounting and Financial Reporting* 1, no. 1 (n.d.): 541. <https://doi.org/10.5296/ijafr.v4i2.6783>.
- Global Arbitration Review. "Human Rights in International Arbitration," n.d. <https://globalarbitrationreview.com/review/the-european-arbitration-review/2023/article/human-rights-in-international-arbitration>.
- Global Law Firm | Norton Rose Fulbright. "Climate Change and Sustainability Disputes: International Arbitration Perspectives," n.d. <https://www.nortonrosefulbright.com/en/knowledge/publications/b4cbedfe/climate-change-and-sustainability-disputes-international-arbitration-perspective>.
- Global Law Firm | Norton Rose Fulbright. "Climate Change and Sustainability Disputes: International Arbitration Perspectives," n.d.

- <https://www.nortonrosefulbright.com/en/knowledge/publications/b4cbedfe/climate-change-and-sustainability-disputes-international-arbitration-perspective>.
- Global Law Firm | Norton Rose Fulbright. "International Arbitration and Climate Change," n.d. <https://www.nortonrosefulbright.com/en/knowledge/publications/9e0b0f59/international-arbitration-and-climate-change>.
- H Shhadah Alhussein, Z Meskic, A Al-Rushoud 'Sustainability and Challenges of Arbitration in Administrative Contracts: the Concept and Approach in Saudi and Comparative Law' 2023 Special Issue Access to Justice in Eastern Europe 10–22. <https://doi.org/10.33327/AJEE-18-6S004>
- HeinOnline. "About - HeinOnline," May 30, 2024. <https://heinonline.org/HOL/LandingPage?handle=hein.kluwer/jia0003&div=34&id=&page=>.
- Kaust Sustainability. "Saudi Arabia's Vision 2030 | Kaust Sustainability," n.d. <https://sustainability.kaust.edu.sa/saudi-arabias-vision-2030/>.
- Kanval, N., Ihsan, H., Irum, S., & Ambreen, I. (2024). Human Capital Formation, Foreign Direct Investment Inflows, and Economic Growth: A Way Forward to Achieve Sustainable Development. *Journal of Management Practices, Humanities and Social Sciences*, 8(3), 48-61.
- Lozano, Kate Gough Stefan Pislevik, Tala Fahoum, Yosr Bouassida, Laura. "Resolving Disputes on Renewable Energy Projects – What Tools Are Available and How Do You Choose?" Passle, April 22, 2022. <https://sustainability.freshfields.com/post/102hn4t/resolving-disputes-on-renewable-energy-projects-what-tools-are-available-and-ho>.
- Matar, Walid, Noura Y. Mansouri, and Evar Umeozor. "Energy Policy Pathways to Inform Climate Policy in Saudi Arabia." *Journal of Cleaner Production* 445 (March 1, 2024): 141190. <https://doi.org/10.1016/j.jclepro.2024.141190>.
- McDonald, Pamela. "Resolving Climate Change Disputes Through Arbitration." *Pinsent Masons*, March 31, 2021. <https://www.pinsentmasons.com/out-law/analysis/resolving-climate-change-disputes-through-arbitration#:~:text=Arbitration%20has%20significant%20advantages%20over,as%20to%20enforcement%20of%20awards>.
- McIlwrath, Michael, Savage, John. *International Arbitration and Mediation: A Practical Guide*. Netherlands: Wolters Kluwer, 2010.
- Monsha'at. "Sustainable Development," n.d. <https://www.monshaat.gov.sa/en/node/12703>.
- Paralika, Marily. "Arbitration: An Answer to Disputes in the Renewable Energy Sector?" Fieldfisher, January 24, 2022. <https://www.fieldfisher.com/en/insights/arbitration-an-answer-to-disputes-in-the-renewable>.
- Saraji, Soheil, Chen, Si, *Sustainable Oil and Gas Using Blockchain*. Germany: Springer International Publishing, (n.d.).
- Saudi & Middle East Green Initiatives. "Saudi Global Climate Impact-Saudi & Middle East Green Initiatives," n.d. <https://www.greeninitiatives.gov.sa/saudi-global-climate-impact/#:~:text=Saudi's%20Nationally%20Determined%20Contribution,line%20with%20the%20Paris%20Agreement>.
- SCAVO. "Renewable Energy Projects in Saudi Arabia | SCAVO," April 9, 2024. <https://scavo.sa/content-hub/renewable-energy-projects-in-saudi-arabia/>.
- StudySmarter UK. "Climate Change and Sustainability: Relationship | StudySmarter," n.d. <https://www.studysmarter.co.uk/explanations/human-geography/economic-geography/climate-change-and-sustainability/#:~:text=Human%20development%20can%20negatively%20impact,issue%20that%20climate%20change%20presents>.

- StudySmarter UK. "Climate Change and Sustainability: Relationship | StudySmarter," n.d. <https://www.studysmarter.co.uk/explanations/human-geography/economic-geography/climate-change-and-sustainability/>.
- Telefónica. "Investors Show Concern for Climate Change Business Management." *Telefónica* (blog), July 8, 2021. <https://www.telefonica.com/en/communication-room/blog/investors-show-concern-for-climate-change-business-management/>.
- The ESG Framework and the Energy Industry: Demand and Supply, Market Policies and Value Creation. Germany: Springer International Publishing, 2024.
- The ESG Framework and the Energy Industry: Demand and Supply, Market Policies and Value Creation. Germany: Springer International Publishing, 2024.
- The Handbook of Dispute Resolution. Germany: Wiley, 2012.
- The Oil & Gas Year Saudi Arabia 2020. N.p.: The Oil & Gas Year Limited, 2020.
- The Oil & Gas Year Saudi Arabia 2020. N.p.: The Oil & Gas Year Limited, 2020.
- UNDP. "Climate Promise - II," n.d. <https://www.undp.org/pakistan/projects/climate-promise-ii>.
- W. Salacuse, Jeswald, *The Three Laws of International Investment: National, Contractual, and International Frameworks for Foreign Capital*. United Kingdom: OUP Oxford, 2013.
- World Bank Group. "Sustainable Development in Shipping and Ports." *World Bank*, December 13, 2023. <https://www.worldbank.org/en/topic/transport/brief/sustainable-development-in-shipping-and-ports>.