

if a candidate fails in answering one of the questions, he will have to attend an interview that might be nothing more than a repetition of the test he already sent to the Ministry.⁴¹ Although non-Saudis are allowed to arbitrate if they are chosen by the parties to a particular dispute, the Ministry of Justice requires all applicants to be of Saudi nationality.⁴²

Arbitration Clause

Article 6 overcomes one of the main impediments to arbitration in Saudi Arabia, i.e., the recognition of arbitration clause. The article also sets the minimum amount of information that should be included in the arbitration agreement. According to the article, arbitrators shall be appointed by agreement of the parties in the arbitration agreement, which should adequately define the subject of the dispute and the names of the arbitrators. An agreement to arbitrate may also be made by a contractual clause – an ‘arbitration clause’ – relating to disputes arising out of the execution of the contract.⁴³

The failure of courts to recognize arbitration clauses characterized arbitration under the Code of Commercial Courts of 1931 as an impractical and time-consuming dispute settlement mechanism.⁴⁴ Courts did not recognize the arbitration clause because they doubted its validity under Shari’a (most arbitrations at that time were rejected on the ground of uncertainty). One of the conditions of the validity of an arbitration agreement is to have an existing dispute; therefore, the legality of the arbitration clause is controversial. Under Shari’a, a contract whose object did not exist at the time of the conclusion of the contract is not acknowledged, which is similar to the prohibited contracts related to selling fish in the sea or birds in the sky. Hanbali teachings, as the most flexible school in commercial transactions, consider the arbitration clause to be a contractual clause that is valid as long as it does not contradict the purpose of the contract and is not prohibited under Shari’a.⁴⁵ Any rejection may be a result of judges’ misunderstanding of the contractual nature of arbitration clauses.

Traditionally, an arbitration agreement should include the names of the arbitrators, the subject of the dispute, the applicable law and the time of rendering the arbitral award, as well as the seat of the arbitration.⁴⁶ It can be seen in the

41 The Ministry of Justice of Saudi Arabia website at <www.moj.gov.sa> [accessed 17 May 2009].

42 Ibid.

43 Article 6 of the Implementing Rules.

44 See, in general, *supra* n. 6, Albejad, p. 30.

45 See, in general, *supra* n. 5, Ibn Qodamah, Vol. 14.

46 G. Sayen, ‘Arbitration, Conciliation and the Islamic Legal Tradition in Saudi Arabia’, *University of Pennsylvania Journal of International Business Law*, 9/2 (1987), pp. 211–27.

famous incident of *Tahkeem* between Ali the fourth Caliphate and Mu'awiyah the governor of Syria in AD 659.⁴⁷ The arbitration agreements between the Government of Saudi Arabia and Aramco and between the Government of Saudi Arabia and the ruler of Abu Dhabi and the Sultan of Oman in the 1950s followed the same model.⁴⁸ Under Saudi arbitration law there is no need to determine the applicable law in the arbitration agreement or clause because it will be, by default, Shari'a or Saudi law. Moreover, Hanbali teachings give total freedom to the parties to the agreement to include any condition in their agreement, even if the condition is irrelevant to the dispute at issue, as long as it is not contrary to Shari'a principles.⁴⁹

Article 7 of the Implementing Rules deals with the role of the supervisory authority to the arbitral proceedings. The supervisory authority over the arbitration proceedings is the authority originally having jurisdiction over the dispute. The authority originally having jurisdiction over the dispute should issue a decision approving the arbitration agreement within 15 days and should notify the arbitral tribunal of its decision.⁵⁰ This article codifies the opinion of Ibn Taymiyyah, which was that the arbitral award is without value without judicial review.⁵¹ *Diwan Almazalim* and the Ministry of Commerce are the competent authorities to deal with commercial disputes in the kingdom. Regardless of the very recent change in the charter of *Diwan Almazalim*, which moved the competence of settling commercial disputes to the Ministry of Justice, the supervision of arbitration has been one of the *Diwan's* competences up till now.⁵² As a general rule, all the parties to the arbitration and the arbitral tribunal are bound by the Arbitration Act and the Implementing Rules, meaning that any clause, agreement or action found to be in violation of the law is null and void. The *Diwan* in its decision number 53/T/4 of 1414 H. (1994) nullified an arbitral award made without the supervision and approval of the competent authority. In this case, the parties to the arbitration agreed to arbitrate under the supervision of entities other than the competent authority originally having jurisdiction over the dispute. The Review Committee of the *Diwan* set aside the award, stating that, as terms and conditions in the arbitration agreement contradict the Arbitration Act and related law, the award was null and void. As a result, it is prohibited to have a person, legal or natural, as a supervisor for arbitration in the kingdom other than the competent

47 Z. Alqurashi, 'Arbitration under the Islamic Shari'a', *Oil, Gas and Energy Intelligence*, 1/2 (March 2003), pp. 30–44.

48 See Aramco award 27 ILR 117 (1963), p. 128. See also the arbitration agreement between the Government of the United Kingdom acting on behalf of the ruler of Abu Dhabi and His Highness the Sultan Said bin Taimur the Sultan of Oman and the Government of Saudi Arabia signed in Jeddah on 30 July 1954 (HMSO Cmd 9272, 1954) cited in supra n. 347, Kelly, pp. 318–24.

49 Supra n. 46, Sayen, p. 220.

50 Article 7 of the Implementing Rules.

51 Supra n. 31, Al Kenain, p. 49.

52 *Umm Alqura Gazette*, issue No. 4170 dated 30/09/1428 H. 12/10/2007.

authority originally having jurisdiction over the dispute.⁵³ In another case, the *Diwan* nullified the arbitral award rendered without an approved arbitration agreement. In this case, the *Diwan* directed the arbitration tribunal to proceed in deciding the case even though there was no arbitration agreement approved by the *Diwan*. The arbitral tribunal proceeded, relying on the communication of the *Diwan*, including all the information that should be in the arbitration agreement; however, this action was in violation of the law and a mistake on the part of the *Diwan*, which should have informed the tribunal of the importance of having a valid arbitration agreement. As a result the award was considered null and void and the actions of the *Diwan* and the tribunal found in violation of the Arbitration Act and its Implementing Rules.⁵⁴

It is disputed whether the competent authority has supremacy over the arbitration tribunal irrespective of the place of arbitration. When looking at the arbitration regulations, especially article 18 of the Arbitration Act,⁵⁵ it appears that the supervisory authority may act as an appellate body; however, case law regards the supervisory authority as the lower court and the arbitral tribunal as the supreme. Consequently, the *Diwan* will either uphold or reject an arbitral award without the competence to decide on the case anew. In decision number 53/T/4 of 1415 H. (1995) the Committee stated that, because the phrase ‘competent authority’ in the Arbitration Act and its Implementing Rules does not specify the required degree of the court, the supervisory authority should apply its own rules of procedure. The *Diwan* is seen as a second-degree court after the arbitration tribunal; therefore, the *Diwan* should apply its own rules of procedure and the *Diwan*’s duty is only to uphold or reject the decision of the arbitration tribunal.⁵⁶

Article 8 demonstrates one of the impacts of the Aramco award of 1958. Both this article and article 3 of the Arbitration Act are incorporated in the Council of Ministers Resolution Number 58 of 1963 and the Deputy Minister of Commerce Circulation No. 3/9/sh/331/9/2903 of 13/03/1399 H. (1979).⁵⁷ In disputes to which a government authority is party and desires to resort to arbitration, such authority shall prepare a memorandum concerning arbitration in such a dispute, stating in it the subject of the dispute, the justification for arbitration and the names of the parties for submission to the President of the Council of Ministers to consider

53 *Diwan Almazalim* decision No. 61/T/4 of 1415 H. (1995).

54 *Diwan Almazalim* decision No. 99/T/4 of 1414 H. (1994).

55 Article 18 of the Arbitration Act reads as follows: ‘All awards passed by the arbitrators, even though issued under an investigation procedure, shall be filed within five days with the authority originally competent to hear the dispute and the parties notified with copies thereof. Parties may submit their objections against what is issued by arbitrators to the authority with which the award is filed, within fifteen days from the date they are notified of the arbitrators’ awards; otherwise such awards shall be final.’

56 *Diwan Almazalim* decision No. 53/T/4 of 1415 H. (1995).

57 See the Council of Ministers Resolution No. 58 dated 03/02/1383 H. (25/06/1963) and the Deputy Minister of Commerce Circulation No. 3/9/sh/331/9/2903 of 13/03/1399 H. (1979).

approval of the arbitration. The article allows some governmental entities to include arbitration clauses in their contract and, in all cases, the Council of Ministers should be notified of the award rendered in relation to all the disputes involving a governmental element.⁵⁸ In practice, if a governmental entity wants to resort to arbitration for the settlement of any dispute with another party, it should obtain approval from the President of the Council of Ministers; however, a governmental body may include an arbitration clause in its contracts.⁵⁹

Proceeding

Article 9 specifies some of the responsibilities of the competent authority toward the arbitration proceedings. The arbitration proceedings shall be supervised by the authority originally having jurisdiction over the dispute. The authority shall appoint a clerk to act as secretary for the arbitral tribunal. The article sets the duties of the secretary, which include: establishing the necessary records to register the request for arbitration and submitting them to the competent authority for approval of the arbitration document; notifying and communicating in accordance with the Arbitration Act; and carrying out any other responsibilities determined by the competent minister.⁶⁰ Article 8 of the Arbitration Act states that the clerk of the authority originally competent to hear the dispute shall be in charge of all notifications and notices related to the arbitration proceedings.⁶¹ Such notifications include the time and place of the hearings and all communications between the tribunal and the competent authority, witnesses, experts and all other individuals and entities.

Article 10 sets the time for the commencement of arbitral proceedings and illustrates some of the responsibilities of the secretary of the arbitral tribunal. The article requires the arbitral tribunal to fix the date for hearing the dispute within a period not exceeding five days from the date of its notification of the decision approving the arbitration agreement. Parties are notified through the clerk of the authority originally having jurisdiction over the dispute.⁶² The responsibilities of the supervisory authority and the secretary of the arbitral tribunal will be illustrated in more detail below.

58 Article 8 of the Implementing Rules.

59 For further details see Appendix (Z) of the gas concession agreement between Saudi Arabia and Lukoil Overseas and the gas concession agreement between Saudi Arabia and Sinopec International Petroleum and Production Corporation *Umm Alqura Gazette*, issue No. 3990 dated 15/03/1425 H. 4/05/2004.

60 Article 9 of the Implementing Rules.

61 Article 8 of the Arbitration Act.

62 Article 10 of the Implementing Rules.

Notification of Parties, Appearance and Default, and Representation in the Arbitration

This part of the Implementing Rules can be divided into three: the first part illustrates issues related to notifying and communicating with the parties to the arbitration;⁶³ the second part specifies the competent persons to appear before the tribunal;⁶⁴ and the third part deals with appearing or failing to appear before the tribunal.⁶⁵

Article 11 insists on the importance of the role of the secretary appointed by the supervisory authority. All the communication and notification relating to the dispute should be made by the clerk of the authority originally having jurisdiction over the dispute. These communications, whether carried out at the request of the parties or initiated by the arbitrators, should be assisted by the police and the local authority within the scope of their area of competence.⁶⁶

Article 12 determines the official language for the content of all communications of the tribunal. A notification or communication shall be in Arabic in a number of copies according to the number of parties and should include all required information such as the timing of making the notification, the names, addresses of the parties and the server, the names of the arbitrators, the seat of the arbitral tribunal and the timing of the hearing.⁶⁷

If the arbitration agreement provides for the settlement of the dispute by means of arbitration outside Saudi Arabia, the agreement is valid if the conflict of laws rules allow and one of the parties of the arbitration is of non-Saudi nationality. In decision number 155/T/4/ of 1415 H. (1995) the defendant, a foreign company, requested that arbitration should be held outside Saudi Arabia. The Committee decided that the defendant should be bound by Saudi arbitration law and therefore that the arbitration tribunal should be seated in Saudi Arabia, should apply Saudi substantive law and should be supervised by *Diwan Almazalim*.⁶⁸ However, if another law had been given applicability on the merit of the dispute, the *Diwan* would not have opposed the reference to arbitration outside Saudi Arabia, as in decision number 43/T/4 of 1416 H. (1996). In this case the parties to the dispute, a Saudi company against an American company, entered into a distribution agreement and agreed in the arbitration clause to refer their disputes to arbitration in Iowa in the United States. The *Diwan* rejected the claim that the dispute should

63 Articles 11–16 of the Implementing Rules.

64 Article 17 of the Implementing Rules.

65 Articles 18 and 19 of the Implementing Rules.

66 Article 11 of the Implementing Rules and see also article 15 of the Law of Procedure before Shari'a Courts, which determines the persons competent to assist in delivering notifications and communications as follows: the Umdah or chief of the quarter, the police station, to the head of the 'centre', or the chief of the tribe.

67 See article 12 of the Implementing Rules.

68 *Diwan Almazalim* decision No. 155/T/4 of 1415 H. (1995).

be settled restrictedly in Saudi Arabia on the ground of the applicability of other foreign laws on the dispute – when the American party insisted on its rights under the arbitration clause, the *Diwan* asked the parties to refer the dispute to the chosen forum.⁶⁹

If all the parties to the arbitration are Saudis and the dispute is subject to Saudi law, they have no right to arbitrate outside Saudi Arabia and under any other laws, as that would be against public policy. In case number 143/T/4 of 1412 H. (1992) the Saudi disputants agreed to refer their dispute to arbitration in Zurich under the ICC rules. The dispute was a Saudi dispute in all its elements, which made the arbitration clause for arbitration outside Saudi Arabia null and void for contradicting public policy. The Committee stated that the dispute was subject to Saudi law and that the arbitration clause providing for the settlement of the dispute by means of arbitration in Zurich under the rules of the ICC was null and void. Regardless of its contradiction of Saudi arbitration law and its implementing rules, it was seen as an attempt to eliminate the jurisdiction of the Saudi judiciary over the dispute, which is against the public policy of Saudi Arabia. The Committee obliged the parties to refer the dispute to *Diwan Almazalim* to decide on the dispute.⁷⁰ To sum up in the issue of applicable law, if there is a foreign element in the dispute Saudi courts will look at the place of characteristic performance but will not apply foreign law. In cases in which a foreign law is applicable, Saudi courts will give the parties the choice of settling the dispute before the court or through arbitration in the given jurisdiction. However, if both parties to the dispute are of Saudi nationality, Saudi law will apply.

Notification

Articles 13 and 14 deal with the ways of notifying individual parties and determine the place and means of delivering the notifications.⁷¹ Article 15 deals with the same issue but in the case of having legal persons as one of the parties to the arbitration. It determines the related issues of notifying the state, public persons and companies, organizations and private establishments. Notification to the state should be delivered to the competent minister, regional governor and head of the government authority concerned with the dispute, or to their deputies. In matters relating to public persons, notifications and communications should be delivered to the representative authorized by regulations, or his substitute. Finally, in matters relating to companies, associations and private establishments, the notifications and communications should be delivered to the head office as set forth in the commercial register, to the chairman of the board of directors or to the general manager, or to any employee substituting for such person; with respect to foreign

69 *Diwan Almazalim* decision No. 43/T/4 of 1416 H. (1996).

70 *Diwan Almazalim* decision No. 143/T/4 of 1412 H. (1992).

71 See articles 13 and 14 of the Implementing Rules.

companies having a branch or agent in Saudi Arabia, to such branch or agent. The Law of Procedure before Shari'a Courts explains the issue of the notification of parties to the dispute in greater detail. Article 18 of the Law reads as follows:

With respect to government agencies, to their heads or those acting for them; With respect to public corporate persons, to their managers or those acting for them or representing them; With respect to companies, societies, and private establishments, to their managers or those acting for them or representing them; With respect to foreign companies and establishments which have a branch or an agent in the Kingdom, to the branch manager or the one acting for him or to the agent; or the one acting for him; With respect to armed forces personnel and those of similar status, to the immediate superior of the person to be served; With respect to sailors and ship personnel, to the captain; With respect to interdicted persons, to their trustees or guardians as the case may be; With respect to prisoners or detainees, to the warden of the prison or detention centre; With respect to persons who have no known place of residence or designated place of residence in the Kingdom, to the Ministry of Interior in the regular administrative ways for notification by appropriate means.⁷²

Procedure

Under article 16 the secretary of the arbitral tribunal has to bear the duty of submitting the arbitration file to the supervisory authority and notifying the parties and arbitrators of the decision issued approving the arbitration agreement within one week from the date of the approval.⁷³

Article 17 determines the capable persons for representing the parties before the arbitral tribunal. On the day fixed for hearing the arbitration, the parties should appear either in person or through a representative pursuant to a power of attorney, called *wakalah* in Arabic, issued by a notary public⁷⁴ or through any official authority or authority certified by a Chamber of Commerce and Industry. The option of appearance through a representative should not prejudice the right of the tribunal to require the personal appearance of a party if circumstances so require.⁷⁵ *Wakalah* can be translated as 'proxy' but under Shari'a *wakalah* is more than an agreement between two people to act on behalf of one another; it involves, in the case of general *wakalah*, the right to act absolutely as the principal party. In Islamic law, *wakalah* is a non-binding contract on both parties; it is dissolved

⁷² See article 15 of the Implementing Rules and Article 18 of the Law of Procedure before Shari'a Courts.

⁷³ See article 16 of the Implementing Rules.

⁷⁴ The body responsible for issuing powers of attorney in Saudi Arabia is known as *ketabat alad'l*.

⁷⁵ Article 17 of the Implementing Rules.

by the death of the agent or the principal regardless of whether the other party is aware of the death. It can be dissolved by resignation, recession or any other ground of dissolving any contract. In the case of limited wakalah, the contract terminates by the time of executing the contract. In the case of a dispute, the power of attorney terminates on the time of rendering the final award.⁷⁶ Any agent to a party to an arbitration should be qualified to accept a power of attorney according to the law of Saudi Arabia.⁷⁷

Article 18 deals with default in appearance before the arbitral tribunal. If one of the parties fails to appear and the tribunal is satisfied that he was notified properly, the tribunal may decide the dispute in the party's absence, provided the parties have both deposited in the arbitration file a record of their claim, defence, answers and documents. The award in such cases shall be deemed made as though all parties were presented. If the party was not duly summoned, the tribunal will be postponed to a subsequent hearing to be notified to the defaulting party. If there is more than one defendant party, some of whom were duly summoned while others were not, and either they all fail to appear or the party who was not duly summoned fails to appear, the tribunal shall, except in urgent cases, adjourn hearing the matter to a subsequent hearing to be notified to the non-appearing parties who were not duly summoned. The award in the matter shall be deemed made as if all parties failing to appear at the subsequent hearing were present. In addition, an award shall be deemed made as if a party were present if the party or his representative makes an appearance at any hearing and submits a case defence or related document. If a defaulting party makes an appearance before the end of the hearing, any award made therein shall be deemed null and void. There are strict conditions for issuing a judgment *in absentia* under the Hanbali teachings. Article 18 codifies the exceptional cases in which the tribunal can render an award without the physical presence of the parties to the dispute. Under Hanbali teaching, an award issued *in absentia* requires a judicial review before its execution because the defendant might have a defence against the claim; nonetheless, as a general rule, the tribunal is not allowed to issue a judgment *in absentia* except in the cases mentioned above.⁷⁸

Article 19 provides for the re-notification of the party that has not been notified in the proper manner. According to the article, if a party fails to appear and it seems to the tribunal that his summons by publication was invalid, it shall suspend hearing the claim to a later hearing to be validly re-notified to such party.⁷⁹

76 Supra n. 46, Alatasi, Vol. 5, articles 1521–1530.

77 There are a few persons who are unable to act as agents or accept the power of attorney before the judicial bodies in Saudi Arabia such as minors, women and non-Saudis. See the Code of Law Practice of Saudi Arabia, Royal Decree No. M/38 dated 28/06/1422 H. (2001) *Umm Alqura Gazette*, issue No. 3867 dated 17/08/1422 H. (2001).

78 See, in general, supra n. 5, Ibn Qodamah, Vol. 14, p. 96.

79 Article 19 of the Implementing Rules.

Hearings, Procedure and Recording of the Case

Confidentiality of Proceedings

Under article 20 the case shall be publicly heard before the arbitral tribunal unless the tribunal decides otherwise on its own initiative or on the request of one of the parties for reasons evaluated by the tribunal.⁸⁰ Accordingly, any member of the public is allowed to attend the hearings without restrictions.⁸¹ Under this article the option of having a private hearing cannot be extended to the issuance of the final award, which must be in public.⁸² This article seems to contradict one of the main purposes of arbitration, as confidentiality is deemed to be one of its advantages as a method. Some commentators claim that the objective behind the publicity of arbitral proceedings is to enhance transparency and impartiality, but this view does not match the reality in Saudi Arabia nowadays. As a general rule, court proceedings are to be held in public; however, in Saudi Arabia individuals who are not involved in the dispute cannot even enter the courtroom. In addition to the negative attitude of some judges, the infrastructure of most of the courts in Saudi Arabia does not enable members of the public to attend court proceedings. Saudi law should not impose publicity on the arbitral tribunal when state courts do not apply it to their own proceedings. Article 20 is supported by article 61 of the Law of Procedure before Shari'a Courts, which states that the judge on his own or at the request of one of the litigants can close the hearing in order to maintain order, observe public morality, or for the privacy of the family.⁸³ Although this article does not contradict the Hanbali law of arbitration, it does contradicts one of the objectives of the resort to arbitration as a private dispute settlement mechanism.

Traditionally, disputes used to be settled in public places. The judge or regional governor sat either in the mosque or in his *Diwan* to hear and settle disputes between members of the public. With reference to the Islamic law of arbitration, this article is in compliance with traditional rules; however, in the light of modern custom and trade practice, the application of this article can be harmful to the parties, especially in terms of their business reputation and credibility.

Article 21 requires there to be a satisfactory excuse for suspending the hearing of a case.⁸⁴ Article 22 upholds some of the rights of the parties to have a fair trial. The arbitral tribunal shall enable each party to represent his comments, defences

80 Article 20 of the Implementing Rules.

81 A. Aldar'an, *Alqawa'ed Al ijrae'iyah fe Al morafa'at Alshar'iyah* (1st edn., Altawbah Publications, 1993), p. 67.

82 Ibid.

83 Article 61 of the Law of Procedure before Shari'a Courts, Royal Decree No. M/21 dated 20/05/1421 H. (2000). *Umm Alqura Gazette*, issue No. 3811 dated 17/06/1421 H. (2000).

84 See article 21 of the Implementing Rules.

and answers orally or in writing to an appropriate extent on the date of the hearing.⁸⁵ As a general rule, the tribunal is not allowed to decide the dispute without hearing all the parties and giving them an equal chance to represent all their evidence.⁸⁶ Moreover, giving a judgment on the basis of the arbitrator's personal knowledge is prohibited, because it might create the suspicion of bias and constitute grounds for challenging the award. Even if the arbitrator feels certain of his own knowledge of the facts, he is not allowed to rely on it in rendering the award without clear evidence.⁸⁷ The article adds that the defendant shall be the final speaker, which is the normal end of any typical dispute before a Shari'a court.

The typical procedure before any Shari'a court consists of three stages. First, the plaintiff raises the claim, which should be precise in all its details. The claim can be in writing or verbal at the time of the trial. Second, the judge invites the defendant to answer the plaintiff's claim. At this stage, the defendant will either admit the claim (*iqrar*) or deny it (*nokoul*). If the defendant denies the claim, the judge will ask the plaintiff to adduce evidence (*baiyannah*), which can be anything like documents or oral testimony of witnesses. The final stage starts if the plaintiff fails to provide the court with sufficient testimonial evidence; he may then administer the oath (*yameen* or *qasam*). If the defendant swears that the claim is groundless, the claim will be dismissed; however, if the defendant refuses to take the oath, the case will be decided in favour of the plaintiff.⁸⁸

Article 23 specifies some of the chairman's responsibilities toward managing proceedings. The responsibilities stated in this article are similar to those of a court judge; however, the chairman has no right to imprison anyone for any misbehaviour before the tribunal. In the case of such misbehaviour, the chairman can only expel the person from the place of the hearing and report him to the competent authority. Each arbitrator has the right to direct questions and interrogate parties or witnesses through the chairman of the tribunal.⁸⁹ The responsibilities of court judges toward managing proceedings are stated in articles 69 and 70 of the Law of Procedure before Shari'a Courts. The only difference is that the judge can imprison anyone disturbing order for up to 24 hours.⁹⁰ In accordance with the Law of Procedure before Shari'a Courts, the expelled persons might be referred to the authority after the 24-hour sentence in case of committing an offence against the judge or anyone at the trial; however, such misbehaviour cannot be decided by the same judge because he would be himself a party to the case.⁹¹

85 Article 22 of the Implementing Rules.

86 *Supra* n. 5, Ibn Qodamah, Vol. 14, p. 96.

87 *Ibid.*

88 See, in general, B. Ibn Farhoun, *Tabsirat Alhokkam Fe Usul Alaqqadiyah Wa Manahej Alahkam*, ed. Taha Abdulraouf Sa'ad (1st edn., Maktabat Alkolliyat Alazhariyah, 1986).

89 Article 23 of the Implementing Rules.

90 See articles 69 and 70 of the Law of Procedure before Shari'a Courts.

91 This information was given by an official in the Ministry of Justice who preferred his name to be confidential.

Article 24 provides for what the tribunal might do in case parties reach an extrajudicial settlement. The parties can request the tribunal at any stage of the case to record their agreement as to an admission, settlement and waiver or otherwise in the record of the hearing and the tribunal shall make an award based on the parties' agreement.⁹² Article 67 of the Law of Procedure before Shari'a Courts supports this article and provides for the same steps to be taken by the court in the case of reaching a settlement for the dispute outside court to give it a binding nature, instead of being a mere statement from the parties without enforceability.⁹³

Article 25 provides for the official language for arbitration proceedings. Arabic is the official language before the arbitral tribunal, whether in oral discussions or in writing. The tribunal, the parties and other persons should, exclusively, speak Arabic. A foreigner who does not speak Arabic should be accompanied by an accredited translator who should sign with him the record of the hearing as to the oral statement he translated.

Arabic language is the official language in Saudi Arabia; therefore all communications and contracts before any governmental entity must be in Arabic. Contracts with the Saudi Government can be signed in an additional language but in the case of a dispute relating to the execution of such a contract the disputants should refer to the Arabic version of the contract.⁹⁴ This principle was established by article 1 of the Basic Law.⁹⁵ It is also supported by article 1 of the Law of Procedure before Shari'a Courts, which states that Arabic is the official language for all hearings and communications, and that if circumstances require the use of another language the documents or statements must be translated into Arabic.⁹⁶ In Hanbali law, if one of the parties to a dispute does not speak Arabic and the arbitrator does not know the party's language, an accredited translator must attend the hearing to translate between him and the arbitrator and between him and the other parties to the dispute. The translators should possess the characters of *adalah*, or full legal capacity.⁹⁷

Article 26 gives the arbitral tribunal discretionary power to postpone the hearing of a case if the parties request it in order to represent their documents, papers or comments material.⁹⁸ Article 27 provides for the writing of the facts and proceedings of the hearing in a record prepared by the secretary of the tribunal

92 Article 24 of the Implementing Rules.

93 See article 67 of the Law of Procedure before Shari'a Courts.

94 See, for example, articles 9–31 of the gas concession agreement between Saudi Arabia and Lukoil Overseas. *Umm Alqura Gazette*, issue No. 3990 dated 15/03/1425 H. 4/05/2004.

95 The Basic Law of Saudi Arabia. Alnezam Alasasi Lelhokm. Royal Decree No. (90/A) dated 28/06/1412 H. (1992).

96 See article 1 of the Law of Procedure before Shari'a Courts.

97 *Supra* n. 5, Ibn Qodamah, Vol. 14, p. 84.

98 Article 26 of the Implementing Rules. See also article 65 of the Law of Procedure before Shari'a Courts.