

Arbitration agreement in commercial disputes and ways to appeal it in the light of the provisions of the Saudi Commercial Law

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Abstract

The aim of the current research is to identify the arbitration agreement in commercial disputes and ways to appeal it in light of the provisions of Saudi commercial law in comparison with Australian law. To achieve the aims of the study, the researcher followed the comparative **approach**.

The importance of the current research lies in that between Saudi law and Australian law in the arbitration agreement and ways to challenge it, and this research is the first of its kind among its peers. The research came out with a number of **results**, the most prominent of which are:

The two laws have similarities in the definition of "arbitration agreement", it is an agreement between two or more parties to refer to arbitration all or some specific disputes that have arisen or may arise between them regarding a specific systemic relationship, and both laws are obliged to apply what is stated in the agreements The international law on commercial arbitration that they signed,

and the results of the research showed that the Saudi regime has allowed to challenge the arbitration agreement through a nullity suit, while Australian law has allowed the challenge of arbitration through a request for cancellation.

The research recommended that the Kingdom of Saudi Arabia develop its arbitration laws and practices in terms of the tools needed to interpret the arbitration law. The research also recommends reducing the supervisory role of the competent authorities in commercial arbitration.

Key words: agreement, arbitration, appeal.

" اتفاق التحكيم في المنازعات التجارية وسبل الطعن به في ضوء أحكام القانون التجاري السعودي "

الملخص

هدف البحث الحالي إلى التعرف على اتفاق التحكيم في المنازعات التجارية وسبل الطعن به في ضوء أحكام القانون التجاري السعودي بالمقارنة مع القانون الأسترالي. ولتحقيق أهداف الدراسة أتبع الباحث المنهج المقارن.

وتكمن أهمية البحث الحالي في أنه ما بين القانون السعودي والقانون الأسترالي في اتفاق التحكيم وطرق الطعن فيه ، ويعتبر هذا البحث الأول من نوعه بين نظائره. وقد خرج البحث بعدد من النتائج، من أبرزها: أنّ القانونين قد تشابها في تعريف " اتفاق التحكيم " ، فهو عبارة عن اتفاق ما بين طرفين أو أكثر أن يحبلا إلى التحكيم جميع أو بعض المنازعات المحددة التي نشأت أو قد تنشأ بينهما في شأن علاقة نظامية محددة، ويلتزم كل من القانونين بتطبيق ما جاء في الاتفاقيات الدولية المتعلقة بالتحكيم التجاري التي وقعا عليها ، كما أظهرت نتائج البحث أنّ النظام السعودي قد سمح بالطعن باتفاق التحكيم من خلال دعوى البطلان، بينما سمح القانون الأسترالي بالطعن باتفاق التحكيم من خلال طلب الإلغاء.

وأوصى البحث المملكة العربية السعودية بتطوير قوانين وممارسات التحكيم لديها من جهة الأدوات اللازمة لتفسير قانون التحكيم. كما يوصي البحث بتقليل الدور الإشرافي للسلطات المختصة على التحكيم التجاري.

الكلمات المفتاحية: اتفاق، التحكيم، الطعن

Introduction

Arbitration is considered a private court in itself, and it has a special interest for the parties in dispute. This interest differs from one arbitration to another¹, and the arbitration agreement is subject to the basic principles of litigation. Whose parties wish to be expeditiously adjudicated, and this arbitration sometimes fulfills the interests associated with the parties to the dispute²

Therefore, it can be said that arbitration is a complex system of a dual nature, as it is an agreement concluded between the conflicting parties of all their express will, and likewise it is a judicial action in his job, so that the party that rules between them is not a judge, but rather performs the same function as the judge, Which is the function of adjudicating the dispute before it and issuing a final ruling on it ³ The most important feature of the arbitration agreement is that it is done by the will of the conflicting parties and their desire to resort to arbitration to end the dispute between them as quickly as possible, in absolute secrecy and with minimal efforts ⁴

Appeal in the arbitration agreement is considered a form of exercising control over the arbitration agreement, and the states adhere to the international arbitration agreements that they have signed, and respect the judgments reached by the arbitration body, by making the appeal a means of control and oversight, as it gives the judge complementary power to the authority of arbitrators,

¹ alshawaribiu, A. (n.d.). Arbitration and conciliation in the light of jurisprudence, jurisdiction and legislation. Alexandria: University Press House. P.g 27

² aljamal, M. M., & Okasha, A.-A. (1998). Arbitration in domestic and international private relations. . P.g ٥٧١

³ biqtash, u. a. (2015). Commercial arbitration ruling and ways to appeal it. Master Thesis, Arab Bin Mahidi University, Business Law, Algeria. . P.g ٣

⁴ alshawaribiu, A. (n.d.). Arbitration and conciliation in the light of jurisprudence, jurisdiction and legislation. Previous reference .. P.g 27

This makes him able to review the subject of the dispute. Legislations differ in setting the methods for challenging the arbitration agreement, such as Saudi and Australian legislation under consideration⁵

Through the researcher's reading of the laws, he found that many of them were interested in the subject of commercial arbitration agreement, after the states felt its importance in helping individuals and institutions to solve commercial disputes between them, and an important topic in the arbitration agreement is research in defining this agreement, and the conditions that must be met in it, in addition to the methods used to challenge it. Therefore, the current research will study this subject in Saudi commercial law in comparison to Australian law.

Research problem

The current research deals with talking about the arbitration agreement in Saudi commercial law in comparison with Australian law, the research also deals with ways to appeal the arbitration agreement in both laws, and examines similarities and differences in that. Where the difference between them is the research problem

Research questions

1. What is the arbitration agreement in both Saudi and Australian law and what are its conditions?
2. What are the methods used to appeal the arbitration award in Saudi and Australian law?
3. What are the most prominent aspects of similarities and differences between the two laws in that?

Research aims

1. Learn about the arbitration agreement and its terms in both Saudi and Australian law
2. Disclosure of ways to appeal the arbitration agreement in both Saudi and Australian law

^{5 5} biqtash, u. a. (2015). Commercial arbitration ruling and ways to appeal it. Previous reference. . P.g ٢

3. Disclosure of the most prominent similarities and differences between the two laws in that

Research importance

The importance of the current research is that it compares between Saudi law and Australian law in the arbitration agreement and ways to appeal it, and this research is the first of its kind among its peers

Research Methodology

The current research will rely on the comparative approach to compare between the Saudi and Australian law in the commercial arbitration agreement and the ways to appeal it.

Previous studies and literature review

(**Al-Arabawi, 2016**) prepared a study entitled: "**Arbitration Agreement**". This study aimed to research the arbitration agreement as a legal system that adjudicates legal disputes. The study came out with a number of results, including: that the arbitration agreement is in two forms: the arbitration clause and the arbitration stipulation, where the arbitration clause represents an agreement between two parties to resort to arbitration if a dispute arises between them, and the arbitration stipulation indicates the agreement of two parties after the dispute occurred on Submit it to arbitration, and the results of the study also showed that the arbitration agreement is subject to the general rules in civil law contracts.

(**Bin Abbadi, 2018**) prepared a study entitled: "**Arbitration in Saudi Arabia: The Reform of Law and Practice**". This study aimed to create a supportive environment for arbitration in the Kingdom of Saudi Arabia, as well as to search for methods of a scientific and practical arbitration system in the Kingdom. The study came out with a number of results, including: that the system of commercial arbitration in the Kingdom of Saudi Arabia witnessed many changes, as it started with the "Commercial Court Law of 1931 AD", then it developed into "the Saudi Chamber of Commerce",

then "the Chamber of Commerce Law for the year 1980 AD" and then presented To more than one development until it reached the "Arbitration System in the Kingdom of Saudi Arabia for the year 2012. The results of the study also showed that the Saudi Commercial Arbitration Law is compatible with the principles and rules of Islamic Sharia.

(biqtash, 2015) prepared a study entitled **“Commercial arbitration ruling and ways to appeal it”**. This study aimed to identify commercial arbitration and ways to appeal it. The study followed the descriptive approach, the comparative approach, and the analytical approach in achieving the objectives. The study came out with a number of results, including: that the arbitration agreement gives freedom to the parties to the dispute by choosing the arbitrator between them, and the results of the study showed that appealing the arbitration provisions of commercials differs from the ways of appealing judicial arbitration rulings. The study recommended that countries benefit from each other in the experience of commercial arbitration, and recommended reviewing other methods of challenging commercial arbitration in order to uncover forged documents.

(matar, 2014) prepared a study entitled **“Effects arbitration ruling and appealed methods in it: Comparative Study”** This study aimed to investigate the implications of the arbitration award, the parties to the dispute, and the arbitration panel. The study relied on the comparative analysis method to cover the objectives of the study. Among the results of the study was related to appealing the arbitration agreement, as the study showed that the Saudi regime had authorized the appeal of the arbitration agreement by filing an annulment claim, but only if one of the reasons stipulated in the law was provided, and the results of the study showed that the appeal In the arbitration award, the appellant is not prevented from submitting a stay of execution.

The current research can benefit from previous studies in developing the theoretical framework and benefit from their findings on the subject of the arbitration agreement and ways to appeal it .The current research on previous studies has been distinguished in that it has combined the arbitration agreement and ways of appealing it in both Saudi and Australian law, and this research is unique in comparison with its counterparts from other studies

“ Arbitration agreement in commercial disputes in the Saudi and Australian commercial laws ”

Commercial arbitration in the Kingdom of Saudi Arabia is based on the “Saudi Commercial Arbitration System of 2012” and (Australia) has a “federal system of government” with separate arbitration laws in force in the Commonwealth (as a federal entity) in every state and territory, and international arbitration operates at the federal level of During the "International Arbitration Law of 1974" what is called (the Commonwealth), while local arbitration regulates commercial arbitration procedures for the state or territory, and all Australian legislation depends on what is stated in the "Model Law on International Commercial Arbitration: The Uncitral", and also relies on What came in: "Agreement Of Nauerok "and the" Convention on the Settlement of International Disputes between States and Nationals of other countries ". It is worth mentioning that the recent amendments that responded to international arbitration and commercial arbitration laws worked to strengthen Australia Kmquad regional attractive to international arbitration⁶

⁶ Whittaker, J., Lockhart, C., Bunker , T., & Murray, S. (2017). International Arbitration Review. The International Arbitration Review. . P.g^r^

Commercial arbitration is used in Australia to resolve energy, resource and construction disputes, and arbitration is done locally if the parties to the arbitration have workplaces in Australia, and the Commercial Arbitration Law regulates this in each state, but if the parties to the arbitration operate in different countries or have agreed to refer The dispute for arbitration abroad is that the arbitration is of an "international" nature. Australia is currently relying on the "Model Law on International Commercial Arbitration" both domestically and internationally, as it is compatible with international practices⁷

As Australian law derives its strength from the UNCITRAL law, it works to exercise commercial arbitration by allowing the parties to deal with the dispute between them in a manner that suits them, as it guarantees them complete confidentiality, unifies the procedures and provisions related to withdrawal, and also provides them with a high level of independence and transparency in procedures Their arbitration⁸

Therefore, through the foregoing, the arbitration agreement can be defined in the “Saudi Arbitration System” as: an agreement between two or more parties to refer to arbitration all or some specific disputes that arose or may arise between them regarding a specific statutory relationship, whether it is contractual, non-contractual And regardless of whether the arbitration agreement is in the form of an arbitration clause contained in a contract or in the form of an independent arbitration clause.⁹

The Saudi arbitration system is bound by all the provisions of Islamic Sharia as well as the provisions of international agreements to which the Kingdom of Saudi Arabia is a party, as the provisions of this system apply to every arbitration regardless of the nature of the dispute, and the arbitration may be of an international commercial nature that takes place abroad, and its parties agree to Its subjection to the provisions of this system,

⁷ leeks , A., & Gupta., R. (2015). Interpretation of commercial arbitration Acts. . P.g^٣^

⁸ Tomkinson , D., & Won Lee, J. (2015). Australia as a seat for international commercial arbitration : a secure neutral option in the Asia-Pacific region. australian alternative dispute resolution bulletin . P.g^٣^

⁹ Arbitration System in the Kingdom of Saudi Arabia 2012. Article 1

while noting that the provisions of this system do not apply to disputes related to personal status and issues in which reconciliation is not permitted¹⁰

As for Australia, it defined it as: an agreement between the two parties to refer to arbitration all or some of the disputes that arose or may arise between them regarding a specific legal relationship, whether contractual or not ¹¹

The Saudi arbitration system allowed the conflicting parties to choose the procedure to be followed in a specific matter, in order to guarantee their right to license others to choose this procedure, and it is indicated to others that each individual, body, organization or arbitration center in the Kingdom of Saudi Arabia, or outside it¹²

If the parties to the arbitration agree to submit the arbitration agreement to the provisions of any document, then in this case they must work with the provisions of this document not to violate the provisions of Islamic Sharia¹³, and in the event that there is no special agreement between the two parties to the arbitration regarding the reports, the report must be delivered to the sender To him personally or the person acting on his behalf, or to send it to the postal address specified in the disputed contract, or specified in the arbitration contract or in the document organizing the relationship that the arbitration contains ¹⁴

The Saudi arbitration system permitted the arbitration agreement to precede the establishment of the dispute, even if a lawsuit was brought in relation to it before the competent court, but within the following conditions:

First: That the agreement be determined on the issues covered by the arbitration, otherwise the agreement was void.

¹⁰ Arbitration System in the Kingdom of Saudi Arabia 2012. Article 2

¹¹ UNCITRAL Model Law on International Commercial Arbitration 2006 . p. 5. Article 7

¹² Arbitration System in the Kingdom of Saudi Arabia 2012. Article 4

¹³ Previous reference. Article 6

¹⁴ Previous reference. Article 7

Second: The arbitration agreement must also be in writing, or it becomes void

Third: When writing the arbitration agreement, an editor issued by both parties to the arbitration, or if it includes their documented correspondence, telegrams or other electronic or written means of communication, must be guaranteed.

The reference in a contract or a referral thereof to a document that includes the arbitration clause is considered as an (arbitration agreement), and every referral in the contract to the provisions of a model contract or an international agreement, or another document that includes an arbitration clause is considered as an (arbitration agreement)¹⁵

Fourth: That the party agreed to arbitration has the right to dispose of its rights, regardless of whether this party is a natural person or his representative or a legal person.

Fifth: Government agencies may not agree to arbitration unless after the approval of the Prime Minister under a statutory text¹⁶

As for Australia, it has set a set of conditions related to the arbitration agreement, as follows:

First: The arbitration agreement must be in writing

Second: The arbitration agreement shall be in writing in the event that its content is written orally, or by conduct, or otherwise.

Third: The arbitration agreement must be in writing via an electronic letter containing a data message to be exchanged through e-mail or by other means such as paper telegrams

Fourth: That the arbitration agreement be in writing if it is in an exchange of statements of claim and defense in which one of the parties claims the existence of an agreement and the other party does not deny it.

Fifth: The reference in the contract to any document that includes an arbitration clause constitutes a written arbitration agreement¹⁷

¹⁵ Arbitration System in the Kingdom of Saudi Arabia 2012. Article 9

¹⁶ Previous reference. Article 10

Ways to appeal the arbitration agreement in Saudi and Australian law

With regard to the methods for appealing the arbitration agreement in commercial disputes in the Kingdom of Saudi Arabia, it was mentioned in the “Saudi Arbitration System”, which indicated that the arbitration provisions do not accept (contesting them) in any way whatsoever, except for filing a claim nullifying the arbitration award, that is, that The appeal to the Saudi arbitration agreement is to file a nullity lawsuit¹⁸. As for the appeal to the arbitration agreement in (Australia), it is based on what is stated in the UNCITRAL Model Law, as the appeal of the arbitration decision is limited to the request for annulment in the arbitration decision.

We can divide the reasons for appealing the arbitration agreement in the Saudi system into three reasons:

- 1) appeal the nullity and annulment of the arbitration agreement
- 2) The reasons for the failure of the arbitrator to respect the will of the parties
- 3) Reasons for invalidity of the award or arbitration procedures. **It can be illustrated as follows:**

First: An appeal against invalidity and annulment of the arbitration agreement

Whereas¹⁹, a lawsuit for nullifying the arbitration award is accepted only in the following circumstances:

First: If there is no arbitration agreement, or if the arbitration agreement is void, voidable, or has fallen due to the expiration of its term.

Second: If one of the parties to the arbitration agreement, at the time of its conclusion, is disqualified, or if it is incomplete.

¹⁷ UNCITRAL Model Law on International Commercial Arbitration 2006 . p. 5. Article 7

¹⁸ Arbitration System in the Kingdom of Saudi Arabia 2012. Article ٤٩

¹⁹ This is logical because the arbitration agreement is the basis for the existence of the arbitration system

Third: If one of the parties to the arbitration agreement did not defend himself because he was not properly informed of the appointment of an arbitrator, or the arbitration procedures, or even for any reason beyond his control.

Fourth: If the arbitration award does not apply the statutory rules agreed upon by the parties to the arbitration agreement in the dispute between them.

Fifth: If the arbitration panel was formed, or the arbitrators were appointed in a manner that contravenes the rules or the agreement of the two parties

Sixth: If the arbitration award adjudicates matters that are not in the arbitration agreement, and in this case the nullity may occur on the parts that are not subject to arbitration without nullifying the parts subject to arbitration.

Seventh: If the arbitral tribunal does not comply with the terms of the ruling, or relies on invalid arbitration procedures²⁰

The competent court may consider the (nullity suit) itself by the invalidity of the arbitration award if it contravenes the provisions of Islamic Sharia and public order in the Kingdom of Saudi Arabia, or if this ruling is contrary to what the parties have agreed upon, or if the subject of the dispute is prohibited from arbitration in it. Likewise, the arbitration agreement cannot be terminated due to the judgment of the competent court of nullity (unless a judgment is issued stipulating the nullity of the arbitration agreement, or that the parties to the arbitration agreement have agreed to that))²¹

The reasons for appealing invalidity and annulment are represented in the arbitration agreement in the Saudi system as follows:

First: Reasons for the lack of a legal basis:

What is meant by this is that the invalidity is due to the arbitration agreement, and the reason for this is that there is no arbitration agreement in the first place,

²⁰ Arbitration System in the Kingdom of Saudi Arabia 2012. Article 9

²¹ Previous reference. Article 9

Or that this agreement is void, or that it was terminated at the end of its period, and it was mentioned in the Saudi system as follows:

A- Lack of arbitration agreement

The Saudi regime allowed the ruling to nullify the arbitration agreement, provided that the plaintiff before the arbitrator did not have jurisdiction over the dispute, due to the lack of an arbitration agreement, and if he did not pay that, he would have agreed to consider the bond as arbitration, as he affirmed the following:

1. The arbitral tribunal shall decide on the motions related to its lack of jurisdiction, including those based on the absence of an arbitration agreement, its failure, nullity, or non-inclusion in the subject-matter of the dispute.
2. The pleadings must be expressed that the arbitration board is not competent in accordance with the dates referred to in paragraph (2) of Article (Thirty) of this Bylaw.

It is worth noting that the appointment or participation in the appointment of an arbitrator by either party to the arbitration shall not result in the loss of his right to submit any of these defenses. As for submitting that the arbitration agreement does not include issues raised by the other party during the consideration of the dispute, it must be initiated immediately; otherwise, the right to it will be forfeited. In all cases, the arbitral tribunal may accept late payment if it deems that the delay was for an acceptable reason.

3. The arbitral tribunal shall decide on the defenses referred to in paragraph (1) of this article before deciding on the matter, and it may include it to the subject for adjudication on both of them. According to Article (fifty-fourth) of this system.²²

²² Previous reference. Article ٢٠

B- Invalidation of the arbitration agreement:

Where the competent court that hears a nullity suit automatically decides to invalidate the arbitration award if it includes what violates the provisions of Islamic Sharia and public order in the Kingdom, or what the parties to the arbitration have agreed upon, or if it finds that the subject of the dispute is one of the issues that it is not permissible to arbitrate under this system²³

The Saudi arbitration system also required writing the arbitration agreement, otherwise it was void, and that the arbitration agreement be in writing if it contained an editor issued by both parties to the arbitration, or if it included documented correspondence, telegrams, or other electronic or written means of communication. A reference in a contract, or a reference therein to a document that includes an arbitration clause, is considered an arbitration agreement. Also, in the written arbitration agreement ruling, every referral in the contract is prepared to the provisions of a model contract, an international agreement, or any other document that includes an arbitration clause if the referral is clear in regarding this condition as part of the contract²⁴

C- The termination of the arbitration agreement expiring

Where the arbitral tribunal must issue a ruling that ends the entire dispute within the deadline agreed upon by the parties to the arbitration, if there is no agreement, the award must be issued within twelve months from the date of commencement of the arbitration proceedings.

The arbitration board may also in all cases decide to increase the period of arbitration, provided that this increase does not exceed six months, unless the parties to the arbitration agree to a period that exceeds that.

²³Arbitration System in the Kingdom of Saudi Arabia 2012. Article 50, paragraph 2

²⁴ Previous reference .Article 9, paragraphs 2 and 3

The competent court is required to issue an order specifying an additional period, or to terminate the arbitration procedures, and for either party to submit his case to the competent court.²⁵

D- Eligibility or loss of eligibility for one of the parties to the arbitration:

For agreement on arbitration is only valid for those who possess disposition of their rights, whether it is a natural person - or whoever represents it - or a legal person²⁶

Whereas, the Saudi system permitted the nullification of the arbitration agreement in the event that one of its parties at the time of its conclusion was incompetent, or incomplete, according to the system that governs its eligibility²⁷

Second: The reasons for the failure of the arbitrator to respect the will of the parties:

A- Excluding the application of the will law on the subject of the dispute

The Saudi regime has confirmed that an action to nullify arbitration is accepted only in a range of circumstances, including: If the arbitration ruling excludes the application of any of the statutory rules that the parties to the arbitration agreed to apply to the subject matter of the dispute²⁸

B- Settling matters not covered by the arbitration agreement

In the system it is stated that if the arbitration award is separated in matters not covered by the arbitration agreement, however if the parts of the judgment on matters subject to arbitration can be separated from its parts related to matters not subject to it, then the nullity will only occur on the parts that are not subject to arbitration alone²⁹

²⁵Previous reference . Article 40

²⁶ Article 10, paragraph 1

²⁷ Article 50, paragraph b

²⁸ Article 50, paragraph 1 / d

²⁹ Article 50, paragraph 1 / f

Third: The reasons that refer to the invalidity of the judgment or the arbitration procedures

A- Appointment of the arbitration board in contravention of the law or agreement

This is what was stated in (Article 50 / e), which stipulated that: “If the arbitral tribunal was formed or the arbitrators were appointed in a manner contrary to this system, or to the agreement of the parties³⁰

It also affirmed (Article 13) that the arbitration board is formed from one or more arbitrators, provided that the number is individual, otherwise the arbitration is void.³¹

And the Saudi system stipulated that the arbitrator be fully qualified and of good conduct and behavior, in addition to having at least a university degree in Sharia or statutory sciences, and if the arbitration panel is composed of more than one arbitrator, this condition is sufficient for its president³²

But if the litigants do not agree on how to choose the arbitrators, then they have the right to submit an application to the competent court to form the arbitrators panel³³

B- Breach of the right to defense

C- The invalidation of the arbitration award or the invalidation of the arbitration procedures

Where the system affirmed that the arbitration award is issued in writing and is reasoned, and signed by the arbitrators, and in the case of the formation of the arbitration panel from more than one arbitrator, the signatures of the majority of the arbitrators are sufficient, provided that the reasons for not signing the minority are confirmed in the minutes of the case.

³⁰ Article 50, paragraph 1 / e

³¹ Article 13

³² Article 14

³³ (Article 15) sets out how to choose the arbitrators

it also stressed that the arbitration award must contain the date of its pronouncement and place of issuance, the names of the opponents, their addresses, the names of the arbitrators, their addresses, their nationalities, their characteristics, a summary of the arbitration agreement, a summary of the statements and requests of the parties to the arbitration, their pleadings, their documents, and a summary of the experience report (if any) and operative Judgment, determining arbitrators' fees, arbitration fees, and how they are distributed between the two parties. Without prejudice to the text (Article 24)³⁴

In Australia, the arbitration agreement is appeal through a request for cancellation only, whereby an arbitration decision may not be appealed before a court except by a request for cancellation submitted under paragraphs (2) and (3) of Article (34) as follows:

Paragraph (2): The court named in Article (6) may not cancel any arbitration award unless:

A- The party requesting the cancellation provided evidence that one of the parties to the arbitration agreement referred to in Article (7) lacks eligibility, or that the said agreement is not valid under the law to which the parties subject the agreement, or under the law of this country in the absence of evidence They really did.

Or that the party requesting the cancellation was not properly informed of the appointment of an arbitrator or the arbitration procedures, or that he was unable, for some other reason, to present his case.

Or that the arbitration decision includes a dispute that is not intended or not covered by the arbitration offer agreement, or that it includes decisions related to matters outside the scope of this agreement, that if decisions related to the issues before the arbitration can be separated from decisions not submitted to arbitration, then it is not permissible To be canceled from the arbitration award, the part that includes decisions related to matters not submitted to the arbitration shall be given to the judge.

³⁴ Article 42

Or that the formation of the arbitration panel or the procedure followed in arbitration was contrary to the agreement of the parties (in the event that this agreement was not contrary to the provisions of the law.

B- The arbitration decision is canceled if the court finds that the subject of the dispute cannot be settled according to the law of the state, or if the arbitration decision opposes state policy.

An application for cancellation shall not be submitted after the expiration of three months from the day on which the requesting party received the award, or from the day on which the arbitral tribunal acknowledged that the application was submitted under Article (33).

The court is allowed to suspend the cancellation procedures if it considers that the mother requires this and requested by one of the parties, in order to give an opportunity to resume arbitration procedures, and to remove the reasons on which the cancellation request was based ³⁵

Conclusion (findings, recommendations)

Through this research, a comparison has been made between Saudi law and Australian law on the subject of an arbitration agreement in commercial disputes and ways to appeal it, and the results showed that the two laws have similarities in the definition of an “arbitration agreement”, as it is an agreement between two or more parties to refer to arbitration all or Some specific disputes that have arisen or may arise between them regarding a specific systemic relationship, and both laws are obligated to apply what is stated in the international agreements on commercial arbitration that they signed, but the Saudi arbitration system is also committed to applying the provisions and principles in Islamic law.

³⁵ UNCITRAL Model Law on International Commercial Arbitration 2006 . Article 34

Each of the two laws set specific conditions for the validity of the arbitration agreement, which was that the arbitration agreement be written, as well as condition that the parties to the arbitration exchange messages and information through paper telegrams or through electronic or other means, and that the parties to the agreement have the capacity and ability to Act.

With regard to the ways of appealing the arbitration agreement, the Saudi and Australian law differed in that, as the Saudi arbitration system allowed to appeal the arbitration agreement through the case of nullification and annulment, and that is through three reasons: the reasons related to the invalidity appeal and the annulment of the arbitration agreement, and the reasons that It is due to the arbitrator's failure to respect the will of the parties, as well as the reasons for the invalidity of the award or arbitration procedures.

As for Australian law, the appeal to the arbitration agreement was limited to the request for cancellation, and it is submitted according to paragraphs (2) and (3) of Article (34) of the UNCITRAL Model Law.

The research recommends that the Kingdom of Saudi Arabia develop its arbitration laws and practices in terms of the tools needed to interpret the arbitration law. The research also recommends reducing the supervisory role of the competent authorities in commercial arbitration.

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