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## **Overview of Disputes in the Context of Saudi Construction Industry**

Saad Alsharani \*

*Email: saad.888@hotmail.com*

### **Abstract**

The Kingdom of Saudi Arabia has witnessed rapid economic growth in recent times. This has led to significant economic development, particularly in the construction sector and more specifically, in the field of construction projects, which has grown considerably. Despite this impressive level of growth, the spectre of disputes between disputes parties remains, both in the private and public sector. This paper aims to shed light on this particular phenomenon, highlighting disputes in construction projects in Saudi Arabia, which is a key issue and merits discussion, given the predominant economic and strategic position of the Kingdom in the Middle East. The researcher begins by charting the Kingdom's background, highlighting its demographics and geography. Saudi Arabia's economy is also assessed, by highlighting its economic diversification, nature of investment, the nature of construction projects in Saudi Arabia, method of purchases, and the types of current contracts in the country, as well as examining the claims and disputes that typically occur, and the means by which they are resolved. (The prevalent method of dispute resolution used in the sector at present is litigation, which is widely used, in both the private and public sectors. Finally, the researcher will discuss the Saudi Council of Engineers and its Engineering Arbitration Centre, which resolves disputes in the private sector through arbitration, and which also acts as a resource in providing Expert determination to the court in the event of any disputes involving litigation.

**Keywords:** economic development ; disputes in Construction Industry; Saudi Arabia

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\* Corresponding author.

**1. Middle Eastern countries and construction project dispute resolution**

There has been a continuous rise in the number of disputes in the Kingdom of Saudi Arabia (KSA) region of the Middle East [8]. The total value of disputes in the Middle East region was at its peak in 2011 (US\$ 112.5 million), which has steadily reduced to around US\$ 76.7 million in 2014. However, the time period for resolution has been on the rise, which can be observed by analysing the table below [9] With regards to disputes' resources in construction contracts in the Middle East, [18] mentioned that "the influence of local culture on the performance of the contract parties". Table 1-1

**Table 1-1: Middle East Construction Disputes Resolution Data 2015**

Middle East	Disputes value (US\$ millions)					Length of disputes (months)				
	2010	2011	2012	2013	2014	2010	2011	2012	2013	2014
	56.3	112.5	65	40.9	76.7	8	9	14	13	15

In terms of recognized establishments, a number of global arbitration organizations in Europe have conventionally been used as settings for International Commercial Arbitration (ICA), including several developing countries and foreign bodies. When the context of these organizations is referred, some common names are marked such as the London Court of International Arbitration (LCIA) and the International Court of Arbitration. Several arbitral institutions have been introduced recently in different countries including Nigeria, China, Singapore, Dubai and Cairo. The influence and instrumentality of the Asian-African Legal Consultative Organization (AALCO) should also be pointed out in terms of its endeavours to make arbitration centres more regional [11]. According to [10], AALCO's endeavours contributed to the establishment of regional centres in African countries such as Nigeria and Egypt, with the main aim focused on introducing ICA into Asian and African countries.

There has been a considerable rise in the number of delayed disputes throughout Asia, the Middle East and the UK, with disputes in the Middle East taking longest to be dealt with: such cases can last up to 15 months on average, followed by disputes in Asian countries at just over 14 months. On the other hand, disputes in the USA and Europe have seen a reversing trend with cases taking less time to resolve in 2012. For example, disputes in the USA took slightly less than a year (11.9 months) to deal with. As for dispute charges, they declined in all countries except in the UK, where they kept rising [9].

A closer look at one of the most significant value disputes dealt with reveals a total sum of £660 millions, which accounts for one of the major mega-construction cases being fought. As for the UK, the average stood at £17.89 millions, with almost 13 months to decide disputes. At the top of the table, the Middle East still dominates with rates reaching more than £40 millions with approximately 15 months to arrive at a final decision. Still in the Middle East, there was a decline in the costs from a high of almost £75 millions in 2011 to £43 millions in 2012, which is a dramatic fall; however, values continue to rise to such a level that the Middle East is currently the

highest in terms of value disputes based on the area. According to the same report, there is no specific cause for such decline, but this still shows the sheer size and scale of construction projects launched in the Middle Eastern region [8].

One of the factors contributing to this length of resolution is the sheer size of disputes in the Middle East. The backlog can also be ascribed to the limited number of arbitrators and experts in the field. In Asia, the resolution process is slightly faster at almost 15 months and a typical value of around £27 millions. A major cause for the decline in value is shown in the adoption of cooperative contracting and associated procurement tactics in these countries [9].

## 2. The background of the Kingdom of Saudi Arabia (KSA)

The members of the Gulf Cooperation Council (GCC) include the KSA, the United Arab Emirates (UAE), Bahrain, Kuwait, Oman and Qatar. Located in the Middle East, Saudi Arabia has Iraq, Jordan and Kuwait bordering it from the north; Bahrain, Qatar, UAE and the Arabian Gulf bordering it from the east; and Oman and Yemen bordering it from the south, and finally, the Red Sea bordering it from the west. Figure 1-1.

In general, the GCC bases its culture firmly on the religion of Islam, and this is particularly true in the case of Saudi Arabia. Contrary to a wide number of societies in the world, the culture of the religion is centred on the beliefs of the religion. In Saudi Arabia, religion is considered to be a highly influential and guiding factor that impacts upon all aspects of life, and Sharia Law equates to the Kingdom's constitution [39]. Cultural awareness in Saudi Arabia is also heavily influenced by social structure and tribal traditions.



Figure 1: Map of the KSA

The KSA is the second largest country of the Arab world and the largest country within the Arabian Peninsula; the population is 28 million people, and the area in kilometres squared is 2,150,000. According to OPEC [33],

Saudi Arabia possesses 18% of the world's petroleum reserves and is the largest exporter of petroleum. It is this statistic that makes the country the fastest-growing economy of the Middle East. It can further be stated that Saudi Arabia possesses the Middle East's largest construction sector [37].

### 3. The Saudi economy

The KSA possesses the largest construction sector in the Middle East region. The government is even making attempts to increase the investment made by the private sector in the construction industry. The changes in the demand and supply of oil greatly influence the industry. The GDP of the country was increased by 3.3% in 2012 while the rate was 6.8% in 2011 [25]. In 2011, the minimal growth of GDP was 28.8% while it increased by 6.8%. As per the analysis done by the International Monetary Fund (IMF), the KSA is likely to achieve slower economic growth.

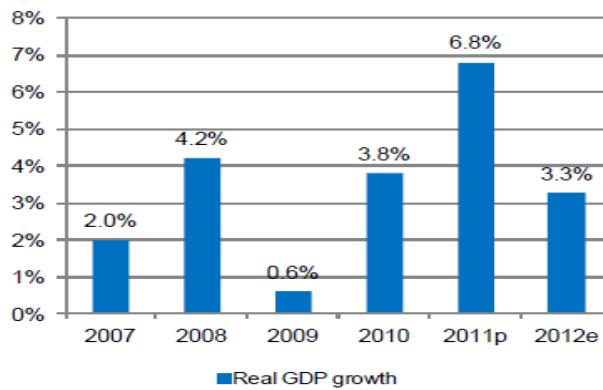
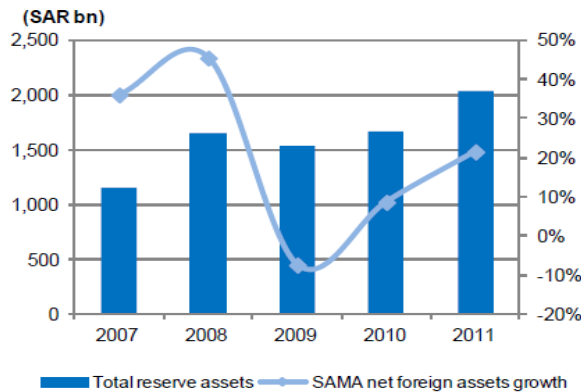


Figure 2: GDP Growth in Saudi Arabia

Fewer fluctuations in oil prices can result in higher GDP growth as compared to the preceding periods. An increased oil export made by the mining and quarry sector was responsible for the growth of GDP by 29% in 2011. The growth further increased by 41% due to the development in the mining and quarry sector. The increase in production and above-average prices were responsible for 70% of the growth in GDP. Another sector responsible for 10% increase in the GDP was the manufacturing sector, which holds an even greater potential. A growth rate of 28% YoY (year-on-year) has been marked in this sector. The government sector made the next highest contribution. This sector accounted for 8% of the increment in the GDP while the sector itself recorded a growth of 15% [25].

From 2010 to 2014, the government of the KSA invested around US\$ 385 billion in the economic and social infrastructure of the economy. An estimated US\$ 16.5 billion was invested in the renovation of the transportation system in the sacred city of Mecca. This included a heavy expenditure of around US\$ 9.4 billion for the renewal and reconstruction of the rail line between the two cities of Mecca and Medina. A total of US\$ 66 billion is in the pipeline for the construction of 500,000 new units in the housing sector. Energy and resources accounted for around 47% of the total cost of the construction programme. The cabinet of the KSA

approved a state budget for the new economic year of 860 billion Saudi riyals, the equivalent of \$ 229.3 billion. This is acknowledged as the largest state budget in the country’s history [12].



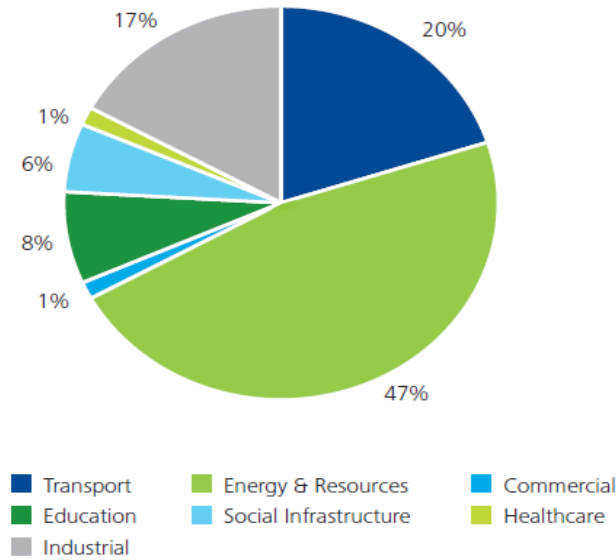
**Figure 3: Saudi Arabian Assets**

The government of the KSA has introduced a number of measures for the reconstruction of the whole city. It has even diversified in the sector of solar energy by investing around 10%. The government is trying to accomplish its energy requirements by 2020 through an investment in the solar energy sector. It would also generate greater employment opportunities, and thus create 15,000 jobs. At present, there is a large potential in Saudi Arabia to increase the amount of localized jobs available to Saudi nationals. This is as a result of a predicted growth in tourism in the country, as well as the oil-based industries [34]. Solar energy plants have been built in the Eastern region of the country at Jubail and in Medina at Yanbu port at an investment of around US\$ 800 billion. Around 20% of the total spending in the construction sector has been directed towards the reconstruction of the transportation sector. The King Abdul-Aziz International Airport reflects the great development taking place in the aviation sector of the KSA. One of the largest projects in the aviation sector with a cost of around US\$ 7.2 billion has been initiated. It has enhanced the overall annual capacity of airports from 17 million to 30 million passengers. Another sector that has drawn the attention of the KSA government is that of railway networks in the economy. It has added a total of 39,000 km long railway tracks and invested in three railway projects, thus improving the railway services across the economy [37].

### **1. Saudi construction projects**

The Construction Project of Saudi has expanded operations in the Middle East and is known to be one of the largest industries in the entire region as it has been ranked second [26]. Given the complex nature of the construction industry, which is composed of numerous parties such as owners, contractors, regulators and consultants, this is particularly important [22]. The construction industry in Saudi Arabia is divided into two sectors, private and public. Both sectors have low performance being the largest construction industry; it suffers from some vital challenges and efficiency in the performance [23]. Several local studies have been conducted, which support the view that the construction industry in Saudi Arabia is suffering from poor performance. The construction industry has been considered as contradictory in Saudi Arabia [4].

**Construction project value breakdown per sector in the KSA**



**Figure 4:** Contract Project Value Breakdown by Sector in the KSA

Numerous means are used in other industries to resolve disputes, such as mediation and dispute review boards. This fact has also been supported by the orders of courts and previous experiences. Despite all its problems and obstacles, the construction industry in Saudi Arabia has been able to develop and enhance its size by embracing innovative ways in its style of working.

The research work is found to be insufficient in the Saudi construction industry, which adds more to the problems. The areas in the construction industry which need attention in research work are contracts and associated claims. On comparing the Saudi construction industry with the construction industry of the UK, it was found that the scope of improvement in the available knowledge and their sources exists in the construction industry of the UK too and the overall situation was found to be similar to Saudi Arabia [13]. Further, it was explored that the procedures being followed for the procurement of projects are leading to disputes in the projects.

## 2. Procurement systems in Saudi Arabia

The government procurement regulations in the KSA have been designed to include various royal decrees in the framework. For government contracts, it was mentioned in the decree issued in 1983 that the contractors are required to subcontract to the extent of 30% of the original contract. Further, the decree provided to support the business concerns particularly, which are governed by the Saudi nationals [14].

In this regard, Saudi nationals are not required to do anything; the exemption is the only thing, which is essentially required. There is a 10% price preference being given to Gulf Cooperation Council “GCC” products

in various government projects. As per the procurement regulations, priority is to be given to domestic products in Saudi Arabia. However, the general procurement decrees do not apply to defense products, and for these products, the regulations vary on a case-to-case basis. The government procurements, in which foreign suppliers are involved, require special training sessions for the national [19].

In addition to this, the government of Saudi Arabia can, at its own discretion, give preference to the joint venture companies, particularly when the consumption of Saudi commodities is involved. Since the military projects are ample in size, and requirements differ from one project to another, a properly designed approach is needed for these projects [21].

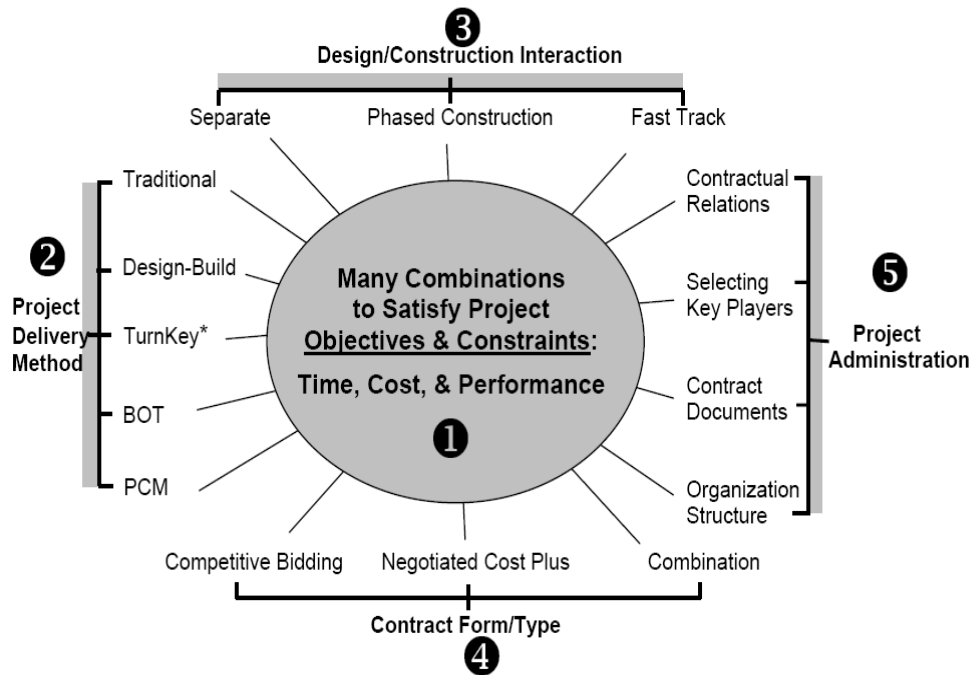
The services of foreign companies can be used by the Saudi government for the sale of its products and services, or it can even directly contact the various public entities registered on a temporary basis. Though the foreign companies dealing with the government do not need to get registered in Saudi Arabia, they have to get temporary registration from the Ministry of Commerce within a month [1]. The efforts of the Saudi Council of Ministers in 2003 have made the government procurement process more transparent. It requires the disclosure of the names of the parties, their financial status, their contract period and site of execution, and contact [27]. The Saudi Arabian government was able to initiate a number of negotiations for the procurement after attaining membership of the World Trade Organization (WTO). It was even viewed as one of the keen observers in the WTO Committee on the government procurement in December 2007 [29]. In the committee's accession process, there is no other initiation for negotiations proclaiming that it will initiate at the time of the revision of the agreement [32]. In December 2011, the GPA text in the agreement was proposed for revision. At the beginning of 2012, it was assumed that negotiations in the GPA accession would be started in the region of the KSA [35]. In the present day, the 'law-price tendering process' is gaining increasing popularity, and many studies report this method as being responsible for the existence of adversarial relationships between different project parties [31].

The contract is considered to be an essential document in the process of assessment of claims as the parties to the contract abide by the terms of the contract. In making a contract, several strategies are needed to be drawn by the owner, as depicted in Figure 1-5 [2]. There are some key reason and moderation of the project, which are defined as project delivery, construction scheme designing and having the right form of contract. The varying forms of contract, resulting from different circumstances, have changed the procedures being followed in conflict resolution in construction projects.

### **1. Contracts in Saudi Arabia**

Since this research has been carried on construction projects in Saudi Arabia's private and public sectors, it can be noticed that due to state support, the public sector holds the most control, because the public sector has spent nearly 4 billion Riyals on projects such as constructing universities, airports, railways and hospitals and also expanding the two holy shrines in Mecca. It should be considered that over 300000 Saudis are working in construction sector [41].

Meanwhile, private sector cooperation in domestic gross production is anticipated to rise from 40% to 65%, as the cooperation in construction section in Saudi reached 7% in year 2015. Among the projects that were recently executed by private companies Saudi Binladin Group were: the expansion of the Prophet’s Mosque in Madinah Munawwarah (the Holy City of Madina) and King Abdullah University in Thuwal, which cost over 5 billion dollars, while Saudi Oger Company, the Saudi company reported that its net income exceeded 8 billion dollars, conducted the execution and supervision of the construction of the railway station and Prince Nora University in Riyadh [40].



**Figure 5:** Strategies Used for the Purpose of Contract (Agwu, 2012)

There are some standard forms of contracts, for instance the Institution of Civil Engineers and the International Federation of Consulting Engineers (FIDIC), which are being followed in Saudi Arabia in order to determine the relationship between the parties involved in a contract. This is done for the purpose of carrying out a particular project [1]. Foreign firms have a dominant position in the construction industry of Arab countries.

As far as the process for domestic contracts is concerned, a single contract model is applied for conducting governmental projects. In this contract model, usually, a public works contract (PWC) is entered. Further, these contracts appear to be one-sided contracts, due to which contractors should assume more risk. For this reason, these contracts become less preferable for local contractors. Local contractors are demanding modifications in this process so that these contracts can be made less risky [36].

In recent years, the formats of international contracts have undergone numerous changes in the local market of Saudi Arabia. Commonly, the formats of international contracts are known as FIDIC or, sometimes, as AIA. The legal system of Saudi Arabia follows the law of Shari’ah, along with the other common laws for business contracts, which provide for the regulation of international contracts [36].



A research study revealed the impact of different forms of construction contracts on construction claims [35]. In this research study, a survey was conducted with the contractors, owners and consultants by applying the random sampling strategy. This research study concluded that the Saudi public used a contract model whereas 7% of contractors used the FIDIC; others used various different forms, which they found to be suitable.

A thorough study of work contracts was done by [27], in order to understand every aspect of the contracts. This research was carried out by conducting a survey with the engineers and companies operating in the construction industry. From the analysis of the data, it was inferred that public works contracts in Saudi Arabia are not as transparent as they should be. On the other hand, they have numerous vital obstacles with regard to the degree of fairness [27]. As a consequence, the reliability of contracts is being questioned in Saudi Arabia.

Another study was conducted with a view to gaining insight into the deficiencies in public works contracts in Saudi Arabia. The major problem areas encountered in this research were the terms, conditions and articles contained in the contracts. In public works contracts, the contractors were compensated for the inflationary effects in the contracts. The aforementioned weakness or deficiencies were highlighted in this research study by making a comparison with the other standard forms of contracts [15].

There were a few claims, which were raised in the FIDIC contract, that were having an impact on capital and time. These cases are usually found in the public works contracts. Further, it has been discovered that the practice of delay in payments is persistent in each form of contract [1].

## **2. Conflicts, claims and disputes in Saudi Arabia**

Saudi construction projects have been subject to a lot of conflicts, claims and disputes largely due to the dramatic growth and development of urban space in the private and public sectors in Saudi Arabia, such as the establishment of infrastructure including airports, bridges, universities and railways. These large projects require highly skilled employees and technicians of different nationalities. Because all these parties work in the same place and at the same time, lots of disputes result, and they are not easily resolved, so the only method used is litigation.

For example, delay in completion of projects is becoming a major concern, and this can be observed from the facts revealed by a survey that 70% of the projects could not be completed on scheduled time [6]. In other studies, it was found that a contractor can be influenced by a number of things, including the project period extending, the overhead costs of the project increasing and a hindrance to be presented that stops the contractor from identifying an alternate business opportunity [7]. Finally, all these disputes arising from large Saudi construction projects need an untraditional method of dispute resolution to solve them.

## **3. Methods of dispute resolution in the Saudi Arabia**

In the case of Saudi Arabia, disputes in the construction industry have been ongoing over the past few months; nevertheless, it is still largely a transactional market in which disputes that do happen are generally dealt with through global arbitration bodies and local litigation. With respect to local litigation, existing government

business laws stipulate that disputes related to key government ventures be resolved by these courts. It should be pointed out that the government is the largest procurer of construction projects in Saudi Arabia. With that in mind, and in reference to the 2012 Saudi Arbitration Law, the process is gaining momentum, with local courts continuously delivering vital verdicts in favour of the intent of the legislation, while contracts are increasingly referring to it in their dispute resolution terms. It is therefore predicted that Saudi arbitration will become the prevailing type of dispute resolution in Saudi construction ventures for years to come [16]. [5] looked at dispute resolution in Saudi Arabia, investigating cases that were presented to grievance courts to determine the time it took to resolve such cases. It was found that dispute cases in the country lasted from one year to as long as eight years.

### **The litigation system in Saudi Arabia**

The litigation system in the KSA has been framed in such manner that criminal and civil cases have been made subject matter to be dealt by the Ministry of Justice. [30]. Discovered that the Board of Grievances is the authority vested with the responsibility for resolving disputes related to public contracts. The structure of the legal system in the KSA constitutes the Board of Grievances, Shari'ah Courts and several other committees divided into various categories based on the nature of cases involved. The courts of Shari'ah have been vested with all the powers relating to general matters and are empowered to hear cases involving civil matters, whereas different adjudicatory bodies, having special powers, exist in the country to hear and resolve special matters.

Apart from having the powers to handle civil cases, the Courts of Shari'ah have also been empowered to adjudicate matters pertaining to family and property. Further, various independent specialized committees, free from the jurisdiction of the Shari'ah Courts and Board of Grievances, have been formed under the auspices of the government agencies to deal with special cases [28].

The desperate need for reforms in the judicial system of Saudi Arabia forced the king of the country to bring in new laws in the system, and consequently a new law, named Judiciary-4, has been added to the series of judiciary laws. The introduction of the new law will lead to the establishment of some new courts in the country [24]. The newly established courts, which include the labour courts, criminal courts and commercial courts, will be responsible for adjudicating special matters in the country. The Board of Grievances will be given the authority of Apex Court as soon as these courts are made operative. However, it is to be noted that the new law, which was introduced in 2007, still has not been made operative in its entirety.

The Board of Grievances covers within its ambit cases relating to the rights provided for in the civil services. Further, it extends to the law matters pertaining to the pension of the employees, whether they are government employees or hired or even independent public entities. The administration has not been able to utilize its powers correctly and has violated rules and regulations. In addition to this, the absence of a proper legal system has led people to raise their eyebrows regarding the working of the administration. This recklessness in the administration has resulted in cases for compensation being filed against the public corporate organization and the government. However, in most of the cases, either the government or the corporate agencies are involved as a party [20]. There were a few instances where the Bureau of Control and Investigation has also been noticed to

file cases of disciplinary conduct. Penal cases for various crimes, such as forgery, combating bribery and others, are filed with the Board of Grievances. The Board of Grievances has also conducted hearings for the criminal activities that are provided for under Royal Decree no. 77 dated 23/10/1995 and Royal Decree no. 43 dated 29/10/1975 relating to the Law of Handling Public Funds.

Finally, although Saudi construction projects use litigation to solve disputes in the public sector, there are still many barriers to such use, such as the small number of judges and courts [38]. In addition to these barriers, there is also judges' lack of knowledge of how to deal with alternative dispute resolutions in Saudi construction projects.

### **Expert determination**

There are differences in expert determination in Saudi Arabia to those in other countries which content, which is called ADR. Expert determination in Saudi Arabia is under cover of litigation and is conducted at the judge's request. The judge also is not constrained to execute upon the report. The Saudi Council of Engineers' Arbitration Center, other than the responsibility that it holds, such as arbitrating in disputes, also provides expert determination through trusted experts from the Saudi Council of Engineers.

When a dispute is brought before a judge in court, the judge will have the right to consult on the issue under the following conditions. The judge can request for a trusted expert or other state entities to be consulted, and then they will provide expert determination. If such an expert is not at hand, the judge will have the right to request an expertise report to be provided by whoever is available and able to be reached. There is a department in the court that consists of experts and engineers, and its responsibility is to assign expertise to the court. Also, they are a commission for expertise within the Ministry of Justice that holds meetings three times a year [3].

#### **4. The Saudi Council of Engineers (SCE)**

The Saudi Council of Engineers has the Arbitration Centre to resolve disputes to do with Saudi construction projects in the private sector. The Arbitration Centre of the Saudi Council of Engineers has more than 55 arbitrators and experts, who are chosen based on a special evaluation by the Arbitration Centre of the Saudi Council of Engineers as well as their experience and qualifications. According to these conditions, the Arbitration Centre of the Saudi Council of Engineers licenses them to engage in arbitration in Saudi construction projects.

One of the duties of the Saudi Council of Engineers is to establish an appropriate foundation to persuade engineering career and promote employers' expertise, based on the Council of Ministries' resolution, number 222, where a mandate is issued on 13.9.1423 AH. Upon that it is mandated that assessments, investigations, courses and conferences are to be conducted to promote such career and also that technical consolation must be executed according to the Council Secretariat's ground rules [42]. The Saudi Council of Engineers covers specific aims, points of view and strategies. Also, one of its aims is to build up highlighted competence and promote an atmosphere for engineers in order to create development, innovation and, ultimately, to support the Saudi Council of Engineers. Under this resolution, some items are also added [42].

## 5. Summary

This article contents form nine sections. The first section explains the Middle East countries and construction especially the KSA is part of it. The second section that the background of Saudi. The third and fourth section, that the economy of Saudi and Saudi construction project where the Saudi construction project is the pivot of the economy of KSA, as the overall economy is dependent on the construction industry. The fifth section the procurements in Saudi after that the six section, the contracts in Saudi where the public work contracts it used in public sector and the have many problems such as: bias and high risk, the missing set of rules to make provisions for high inflation. The seventh section covers conflict, claims and disputes. Then the eighth section is about methods of dispute resolution in Saudi Arabia. Such resolution depends on local courts in both the public and the private sectors, although litigation in Saudi Arabia has disadvantages, such as economic costs (including both direct and indirect costs), and costs involving time, relations between parties and also reputation. The final section is on the Saudi Council of Engineers.

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