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Journal of Sharia and Law – Tafahna Al-Ashraf



Judicial

A Peer-Reviewed Scientific Journal

Issue Thirty-Eight | Rajab 1446 AH | January 2025 AD

- Foundations of Applying the Saudi Civil Transactions Law
Dr. Abdulrahman bin Mohammed Al-Ameed
- Interpretation of Legal Texts and Its Branches Between Sharia and Law – An Foundational Study with Application to Saudi Regulations
Dr. Falih bin Seyyad Al-Dosari
- The Standard of a Null Administrative Decision in the Jurisprudence of the Saudi Board of Grievances in Light of Comparative Jurisprudence and Egyptian Judiciary
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- Criminal and Discretionary Penalties in the Kuwaiti Civil Transactions Law – A Jurisprudential Study
Dr. Alaa Adel Al-Eid

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Controls for Publishing in Judiciary Journal



1. The research must be within the field of judiciary and must not have been previously published.



2. The research must be characterized by novelty and originality.



3. The researcher must adhere to the scientific methodology for writing research and verifying manuscripts.



4. If the research is a manuscript verification, the researcher must mention what adds scholarly value and that it has not been previously verified.



5. The research is submitted via the journal's email: mag@qadha.org.sa in both (Word) and (PDF) formats, with a version including the researcher's name and another without it.



6. The font size should be (18) for the main text and (14) for footnotes, using Traditional Arabic font.



7. The number of pages must not exceed (50) pages.



8. The researcher must attach an abstract in both Arabic and English, not exceeding 200 words, along with a complete CV.



9. The journal reserves the right to publish the research on the association's website after approving its publication.



10. The researcher is not entitled to publish the research before six months have passed from the date of publication in the journal.



Arbitration Procedures in Judiciary Journal

01



First Stage

- ✓ The Editor-in-Chief reviews the research for compliance with the journal's publication guidelines.
- ✓ If compliant, it is referred to the Arbitration Committee for evaluation.
- ✓ The researcher is notified of preliminary acceptance for arbitration or rejection with justification.

02



Second Stage

- ✓ The research is sent to two independent referees for scientific evaluation.
- ✓ Assessment criteria include: **topic significance, originality, clarity of title & objectives, scientific depth, methodology, language, style, and validity of conclusions.**

03



Third Stage

- ✓ **Referees' report issued:** Accepted as is, Accepted with revisions, or Not accepted.
- ✓ If revisions are required, the research is returned to the author for amendments and resubmission.
- ✓ If one referee rejects, it is sent to a third referee.
- ✓ If both referees reject, it is not accepted.
- ✓ The researcher is informed of the final decision with reasons.

04



Fourth Stage

- ✓ The revised research is reviewed and finalized by the editorial team.
- ✓ The final version is received from the researcher.
- ✓ It is prepared for publication and sent to the author for final review.
- ✓ Upon approval, the research proceeds to printing and official publication.



Review



Scientific Evaluation



Decision



Publication



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قضاء

JUDICIARY JOURNAL
A PEER-REVIEWED SCIENTIFIC JOURNAL

Editorial Word



Praise be to Allah, Lord of the worlds, and peace and blessings be upon the most honorable of prophets and messengers.



The Saudi Scientific Judicial Association presents to you the thirty-ninth issue of (Judiciary Journal), which includes in its folds a number of distinguished topics by their nature, such as the sale contract in the case of Drop Shipping, Special Purpose Acquisition Companies (SPAC), and the principles of applying the Civil Transactions System in Saudi Arabia. It also includes other topics that cover various aspects, even if the origin of the topic has been addressed in previous research, such as the prohibited donation according to Sharia, stability in judiciary, criminal penalties and compensation in Kuwaiti labor law, interpretation of texts and their role, the criteria of the null administrative decision, the conditions and regulations of practicing professions, and the regulatory effects resulting from mediation.



The Editorial Board is keen on diversity in the quality of the published research to cover broader interests for its readers. It is worth mentioning the efforts of the researchers and their scholarly contributions in presenting issues that represent the journal's perspective and that of the Editorial Board. The journal welcomes all contributions that enrich its scientific content, whether in the form of critique, commentary, or discussion.



And may Allah send blessings and peace upon our Prophet Muhammad and upon his family and companions altogether.



Editor-in-Chief

Prof. Dr. Mansour bin Abdulrahman Al-Hajri



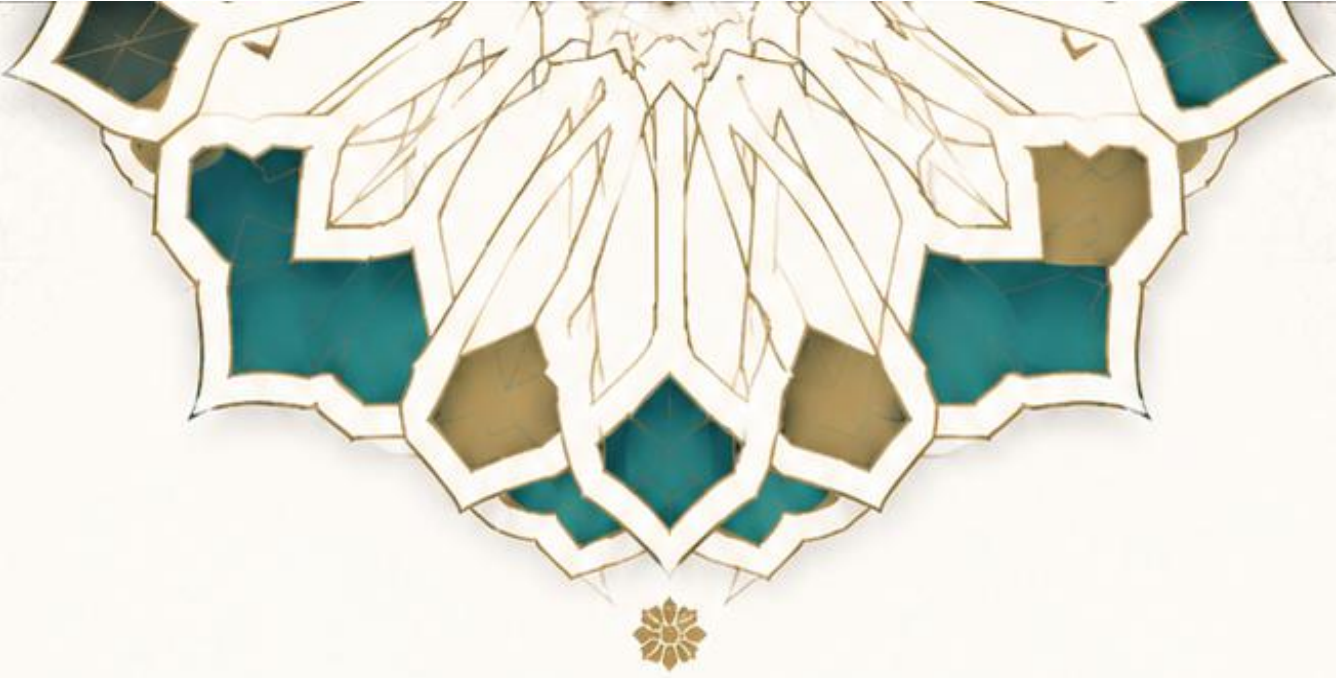
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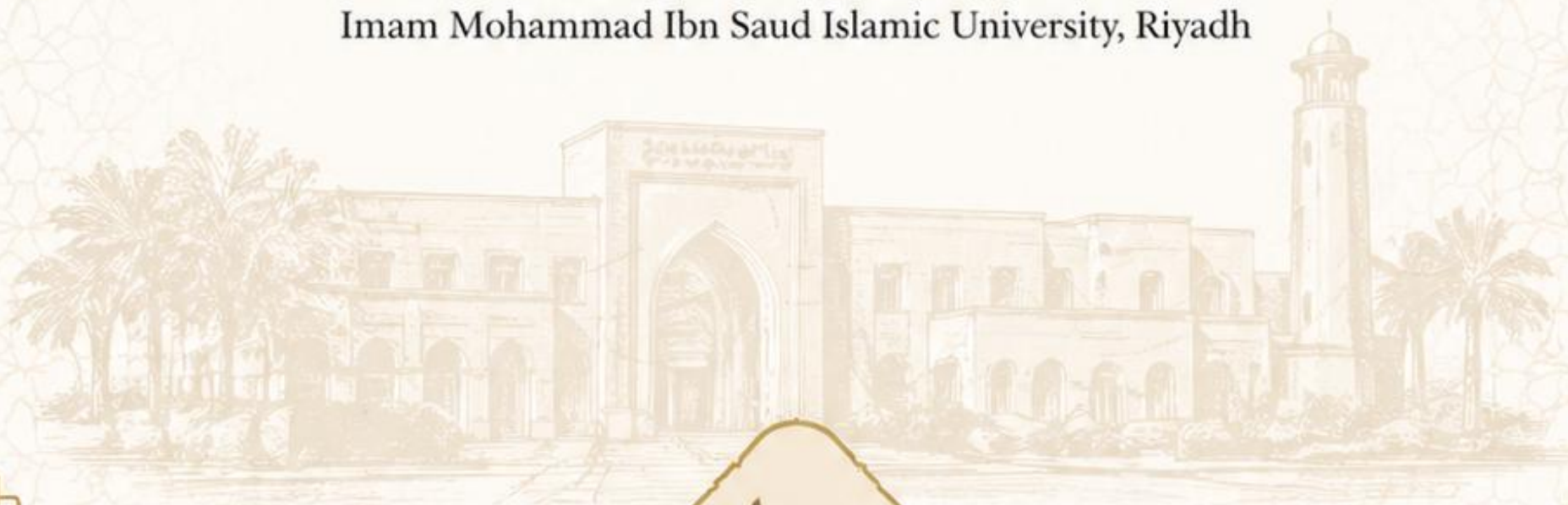


The Legal Implications Resulting from the Mandatory Nature of Mediation in the Kingdom of Saudi Arabia

An Applied Comparative Study
with Islamic Jurisprudence

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قضاء
QADAA



Thirty-Eighth Issue

Rajab 1446 AH

January 2025 AD



Introduction

Praise be to Allah, who says: “*And reconciliation is best*” (1), and peace and blessings be upon the Messenger of Allah, and thereafter:

Mediation in disputes has long been known and practiced since ancient times. In the modern era, its methods, laws, and regulations have evolved alongside the development of interactions among people. Due to its importance, it has become governed by legal rules and texts derived from the provisions of Islamic Sharia, its principles and objectives, in line with the jurisprudential foundation of *public interests (al-masalih al-mursalah)*, and as an extension of the discipline of Sharia policy. This is aimed at achieving quality in mediation, fulfilling its intended goals, and enabling it to keep pace with the rapid developments and complexities in human dealings.

Mediation has thus become a necessary procedure in many disputes and a condition in many contracts. Its applications vary across commercial, personal status, intellectual property, labor, inheritance, real estate, criminal, banking disputes, and others. This has led to the establishment of various mediation centers, such as: the Reconciliation Center affiliated with the Ministry of Justice, the Saudi Center for Commercial Arbitration, the Reconciliation Center of the Cooperative Health Insurance Council, and the Reconciliation Center for settling banking and financial disputes, among others.

Given the diversity of laws and regulations governing mediation, this study focuses on: the regulatory effects resulting from the obligation of mediation in the Kingdom of Saudi Arabia within the judicial system.

(1) Surah An-Nisa, verse 128.

...and comparing what aligns with Islamic jurisprudence, and linking it to judicial applications.

Reasons for Choosing the Topic:

1. The interest of the Cairo Regional Center for International Commercial Arbitration in developments of mediation in disputes within the Kingdom of Saudi Arabia.
 2. Preserving the time of the judiciary and the litigants; as a number of judicial rulings have been issued stating the non-acceptance of a lawsuit for not fulfilling the requirement of resorting to mediation before filing the case.
 3. Preserving the funds of the parties to the dispute; since a ruling of non-acceptance of the case results in judicial costs being imposed on the party against whom the judgment is issued, (1) according to the applicable regulations.
-

(1) Article Two of the Judicial Costs Law issued by Royal Decree No. (M/16) dated 30/01/1443 AH states:

“The provisions of the law shall apply to all lawsuits and requests submitted to the courts, except for the following:”

1. Public criminal cases, disciplinary cases, and related requests.
2. Lawsuits and requests within the jurisdiction of personal status courts, except for cassation requests and requests for reconsideration.
3. Lawsuits and requests within the jurisdiction of the Board of Grievances.
4. Lawsuits and requests related to inheritance division cases, except for cassation requests and requests for reconsideration.
5. Lawsuits and requests arising from the application of the Bankruptcy Law.
6. Enforcement matters and related requests.

Judicial Costs:

This means a waste of funds due to not fulfilling the requirement of resorting to mediation.

4. The issuance of the Code of Ethical Conduct for Mediators at the Saudi Center for Commercial Arbitration, which requires mediators at the Saudi Center for Commercial Arbitration to prepare research and assist in spreading mediation. As stated in the ninth standard of the Code of Ethical Conduct for Mediators at the Saudi Center for Commercial Arbitration entitled “Advancing Mediation Practices,” in paragraph (3): “Participation in preparing research on mediation, whenever possible, including obtaining the views of participants when appropriate,” and in paragraph (4): “Assisting in promoting mediation and educating parties to help them understand it and realize its benefits. (1)”

As for the Importance of the Research:

It is evident through the following matters:

1. Some individuals, through practical practices and judicial precedents, find it difficult to understand all the necessary procedures in mediation and reconciliation for accepting cases before courts and arbitration. Therefore, there is a need for such research that gathers all procedures in one place in a scientific manner.

(1) Code of Ethical Conduct for Mediators, 1437 AH – 2016 AD, <https://sadr.org/>

2. Failure to follow the required regulatory procedures for mediation and reconciliation in cases where resorting to mediation and reconciliation is mandatory results in the non-acceptance of the lawsuit, along with its financial consequences, represented in the payment of judicial costs, as stipulated in the Judicial Costs Law.
3. Studying this topic helps in preserving the time of the judiciary and the disputing parties, and also preserves the funds of the parties to the dispute from the consequences of paying judicial costs.

Previous Studies:

After searching for books on this topic and examining the related issues addressed in this research, it appears that there are writings on closely related subjects that resemble some aspects of this study, while differing in other essential aspects. Among them is the study titled: “*Mediation and Its Impact on Resolving Disputes*” by His Excellency Dr. Salman bin Saleh Al-Dakhil, published in Judiciary Journal, Issue Six, in Jumada Al-Akhirah 1437 AH, corresponding to March 2016 AD.

The study addressed definitions, the history of mediation and its development, the foundations upon which it is based, the stages of its implementation, the virtue of mediation, its ruling in Islamic Sharia, and historical applications of mediation.

This research differs from that study in that it focuses on the regulatory effects resulting from mandatory mediation, based on Article Eight of the Commercial Courts Law issued on 15/08/1441 AH, corresponding to 08/04/2020 AD, and Article Fifty-Eight of its Implementing Regulations.

Dated 26/10/1441 AH, titled “*Mediation and Its Impact on Resolving Disputes*”, and this research was issued before the issuance of this law and its implementing regulations. Among the differences also is that the research focuses on the judicial ruling issued as a result of not resorting to mediation and not following its procedures in a proper regulatory manner, and how to address this issue. Whereas the research titled “*Mediation and Its Impact on Resolving Disputes*” does not focus on the judicial ruling issued in this regard nor the method of addressing it, in the detailed manner presented in this study.

Among the studies that are also close and similar in some aspects, while differing in other essential aspects, is the research titled: “*Reconciliation in Judiciary*” by His Excellency Dr. Faisal bin Saad Al-Asimi, published in Al-Adl Journal, Issue Sixty-Seven, issued in Muharram 1436 AH, corresponding to 2015 AD.

This research addressed definitions, pillars of reconciliation, the legitimacy of reconciliation in the Council of Judiciary, the conditions of reconciliation in the Council of Judiciary, the obligation of reconciliation in the Council of Judiciary, and the invalidity of reconciliation.

The difference between this study and that research is that this study focuses on the regulatory effects resulting from the obligation of mediation based on Article Eight of the Commercial Courts Law issued on 15/08/1441 AH, corresponding to 08/04/2020 AD, and Article Fifty-Eight of its Implementing Regulations issued on 26/10/1441 AH.

Whereas the research titled “*Reconciliation in Judiciary*” was issued before the issuance of this law and its implementing regulations. Another difference is that this study focuses on the judicial ruling issued as a result of not resorting to mediation and not following its procedures.

...its procedures in a proper regulatory manner, and the method of addressing this issue. Whereas the research titled “*Reconciliation in Judiciary*” does not focus on the judicial ruling issued in this regard nor the method of addressing it, in the detailed manner that will be presented in this study.

Objectives of the Research:

To describe the regulatory texts in the Commercial Courts Law and its implementing regulations that clearly require resorting to mediation, presenting and compiling them. Then to explain the regulatory effects resulting from violating these texts when mediation is not pursued or when it is pursued in a manner inconsistent with the law. Also, to clarify the correct regulatory procedures that must be followed in mediation so that it is properly fulfilled.

Difficulties Faced in Preparing the Research:

The inability to obtain reconciliation decisions from the Reconciliation Center that contain facts and reasons. This may be due to the absence of a regulatory framework addressing this issue until now.

Research Methodology:

This study adopts the descriptive approach, by presenting and clarifying the legal text in the Commercial Courts Law and its implementing regulations, which require resorting to mediation clearly, and explaining the regulatory effects resulting from violating this legal text.

...by not resorting to mediation, or resorting to it in a manner inconsistent with the law, and clarifying the correct regulatory procedures that must be followed in mediation.

The study also adopts the applied approach by linking legal provisions to judicial rulings and precedents. It also follows the comparative approach by comparing regulatory provisions with Islamic jurisprudence where possible.

If the issue presented has a Sharia or legal basis, I mention that basis to the extent possible, along with clarifying the ruling of the issue. I document the meanings from reliable language dictionaries, cite verses and specify their surahs, and adhere to the rules of the Arabic language, spelling, and punctuation. I refer to the source directly when quoting verbatim, and if the text is summarized or paraphrased, I indicate its source with the word “see.” I focus on the subject of the research and avoid unnecessary elaboration as much as possible.

This research focuses on answering the most prominent questions raised as follows:

1. Is mediation required in all disputes before filing them before the judiciary?
2. Does the issuance of a judicial ruling of non-acceptance of a lawsuit occur when mediation is not undertaken, or when it is undertaken in a manner contrary to the law, such that it results in the non-consideration of the case before the judiciary?

3. What are the procedures that must be followed when conducting mediation so that it is acceptable before the judiciary?

These are the most important questions addressed by the research.

Structure of the Research:

Preliminary Section: Definitions, origin, and the types of cases in which mediation must be conducted.

It includes three topics:

- First Topic: Definition of effects, law, and mediation.
- Second Topic: The origin of mediation in the Kingdom of Saudi Arabia.
- Third Topic: Cases in which mediation must be conducted.

First Section: Non-acceptance of lawsuits without mediation.

Second Section: Fulfillment of mediation procedures.

It includes two topics:

- First Topic: Jurisdiction and procedures.
- Second Topic: Cases of termination of reconciliation.

Third Section: Submission of proof for the fulfillment of mediation procedures.

It includes three topics:

- **First Topic:** Drafting minutes and reports.
- **Second Topic:** Commitment to reconciliation upon its completion.
- **Third Topic:** Fulfillment of the reconciliation document in terms of conditions, approval, and delivery.

Conclusion

List of References and Sources

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Preliminary Section

Definitions, Origin, and the Cases in Which Mediation Must Be Conducted

Introduction and Structure:

In this research, I will first address—in the first topic—the definitions of the terms used in the title of the study, which may not be clear to some. I will define the term “effects,” the term “regulation,” and the term “mediation,” and then define the research title as a compound concept.

After that, in the second topic, I will explain the origin and historical stages through which mediation has passed in the Kingdom of Saudi Arabia.

Then, in the third topic, I will clarify the types of cases in which mediation must be conducted, as not every case requires mediation.

We begin with the first topic related to definitions, as follows:

First Topic: Definition of Effects, Regulation, and Mediation

Definition of Effects (Āthār):

In language dictionaries, it is stated: “(Athar) is what remains of a trace, such as the mark left by something, and the mark of a sword strike.” (1) It is also said: “(Āthārah) is a sign or trace left behind, and similarly refers to narration.”

(1) Mukhtar Al-Sihah, Zayn al-Din Abu Abdullah Muhammad ibn Abi Bakr ibn Abdul Qadir Al-Hanafi Al-Razi, p. 13, edited by: Yusuf Al-Sheikh Muhammad, Al-Maktabah Al-Asriyah – Al-Dar Al-Namudhajiyyah, Beirut – Sidon, 5th edition, 1420 AH / 1999 AD.

...in two meanings, and the second is: leaving a trace in something. (1)

Based on this definition, we find that “effect” (athar) means the remainder or trace of something in the Arabic language.

Definition of Effects in Islamic Jurisprudence Terminology:

In the dictionaries of the language and the terminology of Islamic jurists, several definitions of the term “effects” (athar) are mentioned. The closest definition to what is intended in this research is:

“The result arising from an action,” and it is also referred to as “consequence.” Jurists sometimes use it in the context of rulings; for example, they say: “the rulings of marriage,” meaning its effects(2).

Definition of Effects in Legal/Regulatory Terminology:

As previously mentioned, this term—when combined with other words—carries multiple meanings. The closest meaning intended in this research is what is stated as:

“Effects of obligations: they are what results from obligations in terms of rulings, most notably the obligation of execution.” Thus, (3) the term “effects” here carries the meaning of “result.”

(1) Previous reference, p. 13.

(2) Dictionary of Jurists’ Terminology, Ahmed Darwish Qadri – Hammadah Sadiq Qanibi, p. 42, Dar Al-Nafaees for Publishing and Distribution, 2nd edition, 1408 AH – 1988 AD.

(3) Dictionary of Law, Dr. Muhammad Rawas Qal’aji, p. 64, General Authority for Amiri Printing Affairs, Cairo, 1420 AH – 1999 AD.

Definition of Regulation (Nizam) in Language:

In the Arabic language, the term “regulation” (nizam) has multiple meanings. It is said:

(1) “Arrangement: to organize something; he organized it in sequence, structuring and ordering it.” (2) It is also said: “The pearl was arranged, (3)” meaning it was strung together in a thread. (4) It is also stated: “A system (nizam) is what something is organized upon, whether thread or otherwise; each part of it follows the same pattern. (5)”

It is also said:

“The system of a matter is its order and structure, and the plural is ‘anzimah’ (systems).”

It is further said:

“Intizam (orderliness) means harmony and consistency.”

Also, it is said:

“A system (nizam) refers to the arrangement of jewels, beads, and similar items, and the path they follow.”

And it is also said:

“There is no system to their matter,” meaning there is no guidance, coherence, or proper order in it.

(1) *Lisan al-Arab*, by Muhammad ibn Mukarram ibn Ali, Abu al-Fadl, Jamal al-Din Ibn Manzur al-Ansari al-Ruwaifi‘i al-Ifriqi, vol. 12, p. 578, Dar Sader, Beirut, 3rd edition, 1414 AH. And similar in: *Taj al-‘Arus min Jawahir al-Qamus* by Muhammad ibn Muhammad ibn Abdul Razzaq al-Husayni, Abu al-Fayd, known as Murtada al-Zabidi, vol. 33, pp. 496–497, verified by a group of editors, Dar al-Hidayah.

(2) *Lisan al-Arab*, previous reference, vol. 12, p. 578. And similar in: *Taj al-‘Arus*, previous reference, vol. 33, pp. 496–497.

(3) *Lisan al-Arab*, previous reference, vol. 12, p. 578. And similar in: *Taj al-‘Arus*, previous reference, vol. 33, p. 497.

(4) *Lisan al-Arab*, previous reference, vol. 12, p. 578. And similar in: *Taj al-‘Arus*, previous reference, vol. 33, p. 497.

(5) *Lisan al-Arab*, previous reference, vol. 12, p. 578. And similar in: *Taj al-‘Arus*, previous reference, vol. 33, p. 497.

By considering these definitions, we find that the term “nizam” (regulation) carries the meaning of organization, coordination, arrangement, and structuring. It also conveys the meaning of consistency, as well as the sense of collection and unity. It also carries the meaning of harmony and coherence.

Thus, the intended meaning of “nizam” in this research combines these linguistic meanings, as it includes the texts of provisions that are connected with one another and organized in a consistent manner to regulate people’s conduct in an orderly way.

Definition of Regulation (Nizam) in Islamic Jurisprudence Terminology:

The term “nizam” appears in multiple contexts depending on the discipline and subject matter, and accordingly takes on a technical meaning suitable to it. Among the terminological meanings mentioned in the books of Sharia sciences is the definition:

“A set of rules and provisions that regulate a specific aspect of human life, and which the community agrees on the necessity of adhering to and implementing. (1)”

Definition of Regulation (Nizam) in Legal/Regulatory Terminology:

By “nizam” in the view of legal scholars, specific regulations are intended, which may be general or specific. As for the general meaning, several definitions have been given, including:

“A set of general abstract rules that regulate the behavior of individuals in society in a manner that guarantees individual freedoms and achieves equality, justice, and the common good.”

(1) *The Economic System in Islam*, by Dr. Omar Al-Marzouqi, Dr. Abdullah Al-Saidi, Dr. Abdullah Al-Nasir, Dr. Ahmed Al-Khatri, and Dr. Mohammed Al-Qarni, p. 12, Maktabat Al-Rushd, 5th edition, 1431 AH – 2010 AD.

The state undertakes to enforce it, even by force when necessary. (1)

In the specific sense, “regulation” has also been defined by several definitions, including:

“A specific rule or a set of rules enacted by the legislative authority to regulate a particular matter in a specific field.” (2)

Definition of Mediation in Language:

In Arabic language dictionaries, the word “wasat” (mediation) carries several meanings. It is said: the letter waw, sin, and ta form a root indicating justice and moderation. The middle of something is its most balanced part, and it is also said: “the middle of the people is their best. (3)”

It is also said: “He was among the people as a mediator, (4)” meaning he was the most just and the best among them.

And it is said: “tawassut” (mediation) is to divide something into two halves, and to mediate between people.

Thus, “wasat” of anything refers to its most just and balanced part. (5)

(1) *Al-Wajeez fi Madkhal li-Dirasat Al-Anzimah* (A Brief Introduction to the Study of Regulations), by Dr. Adel Al-Fijjal, p. 14, Dar Al-Nashr Al-Dawli, Riyadh, 1st edition, 1439 AH – 2018 AD.

(2) Previous reference, p. 14.

(3) *Maqayis al-Lughah* (Language Metrics Dictionary), by Ahmad ibn Faris ibn Zakariya al-Qazwini al-Razi, Abu Al-Husayn, vol. 6, p. 108, edited by: Abdul Salam Muhammad Harun, Dar Al-Fikr, 1399 AH – 1979 AD.

And similarly: *Al-Sihah fi al-Lughah wa al-Sihah al-Arabiyyah*, by Abu Nasr Ismail ibn Hammad Al-Jawhari, vol. 3, p. 1167, edited by: Ahmed Abdul Ghafour Attar, Dar Al-Ilm Lil-Malayin, Beirut, 4th edition, 1407 AH – 1987 AD.

(4) *Maqayis al-Lughah*, previous reference, vol. 6, p. 108. And similarly: *Al-Sihah*, previous reference, vol. 3, p. 1167.

(5) *Al-Sihah*, previous reference, vol. 3, p. 1167.

It becomes clear from the definitions given by linguists that “wasat” (mediation) carries the meaning of virtue, goodness, and justice, and that it lies between two matters that are less favorable than it. Accordingly, these characteristics apply to the intended meaning of mediation in this research.

Definition of Mediation in Islamic Jurisprudence Terminology:

The statements of jurists regarding this term do not depart from its linguistic meanings. (1) Among them is what is mentioned as an issue: the standing of the imam between women and men in prayer, and the analogy with a woman in all aspects. The preferred opinion is not that of equality, but rather that the imam standing in the middle is more virtuous. (2)

Definition of Mediation in Legal/Regulatory Terminology:

It is defined as:

“One of the methods of settling international disputes through peaceful means, where an attempt is made to bring the viewpoints of two or more disputing parties closer together in order to reach a settlement of the dispute. (3)”

Mediation is synonymous with reconciliation (sulh), which is defined as:

“A contract by which the disputing parties resolve an existing or potential dispute. (4)”

(1) See: *Kuwaiti Encyclopedia of Islamic Jurisprudence*, Ministry of Awqaf and Islamic Affairs, Kuwait, vol. 43, p. 138, 2nd edition, Ministry printing, 1404–1427 AH.

(2) *Al-Bahr Al-Ra'iq Sharh Kanz Al-Daqa'iq*, by Zain al-Din ibn Ibrahim ibn Muhammad, known as Ibn Nujaym al-Misri, vol. 2, p. 327, Dar Al-Kitab Al-Islami, 2nd edition.

(3) Previous reference: *Dictionary of Law*, p. 685.

(4) Previous reference: *Dictionary of Law*, p. 108.

In the definition of the Ministry of Justice for reconciliation, it is stated:

“A consensual method for settling disputes—through reconciliation offices—resulting in a full or partial settlement. (1)”

In the definition of the Saudi Center for Commercial Arbitration for mediation (2), it is stated:

“Facilitating negotiation processes conducted by a neutral third party between disputing parties in order to reach a mutually satisfactory settlement. It is an organized process that focuses on the interests of the parties and enables them to resolve the existing dispute through the assistance of one or more mediators in a neutral manner. (3)”

By comparing the two definitions, it is clear that the first definition is general, while the second provides more detail, although both share the requirement of mutual consent between the parties.

Based on the previous definitions of the individual terms, the most appropriate definition for the subject of this research—considered as a compound concept—is:

“The outcomes and regulatory effects that result from the legal obligation to conduct mediation and reconciliation.”

(1) Rules of work in reconciliation offices and their procedures, Article One.

(2) Council of Ministers Resolution No. (448) dated 25/08/1440 AH approving the organization of the Saudi Center for Commercial Arbitration: Chapter One – Nature of the Center, its headquarters and competencies; Chapter Two – Administration of the Center; Chapter Three – Budget of the Center; Chapter Four – Final Provisions.

(3) Official website of the Saudi Center for Commercial Arbitration.

Second Topic: The Origin of Mediation in the Kingdom of Saudi Arabia:

The Kingdom of Saudi Arabia has adopted a supportive stance toward mediation at the international level since the era of the founding King Abdulaziz Al Saud (may Allah have mercy on him). We find the inclusion of a mediation clause in government contracts with foreign investors, as will be explained later. We also find that the Kingdom has signed international agreements that include mediation and reconciliation. We will discuss this in detail as follows:

First Element: International Agreements:

At the level of signing international agreements related to mediation and reconciliation or those that include them, we find:

First: In the year 1400 AH – 1980 AD, the Kingdom joined the Convention of the International Bank for Reconstruction and Development regarding the settlement of investment disputes (ICSID), signed in Washington on 17/03/1965 AD.

The convention provided for the establishment of an international center for the settlement of investment disputes. Article One of the convention states that (1) among the purposes of the center is to encourage the settlement of disputes through reconciliation and mediation.

(1) Definition of conciliation: It is defined as “the settlement of a dispute between two or more parties through a committee that examines the causes of the dispute and presents proposals to resolve it, which the parties may accept. In principle, these proposals are non-binding unless the parties agree otherwise. Thus, conciliation differs from mediation, although both are considered peaceful means of dispute resolution, alongside arbitration and litigation.” Previous reference: Dictionary of Law, p. 616.

The agreement establishing the International Centre for Settlement of Investment Disputes (hereinafter referred to as the “Centre”) states that the purpose of the Centre is to provide means of conciliation and arbitration for the settlement of investment disputes arising between contracting states and nationals of other contracting states, in accordance with the provisions of this Convention (1).

Second: In the year 1404 AH – 1983 AD, and dated 23/03/1404 AH, the Kingdom signed the **Riyadh Arab Agreement for Judicial Cooperation**. Article (35) thereof stipulates conciliation, stating:

“Conciliation concluded before the competent judicial authorities shall have binding effect for the contracting parties and shall be enforceable in the territories of the other contracting states, after verifying that it has the force of an enforceable instrument in the state where it was concluded, and that it does not contain provisions that contradict the rulings of Islamic Sharia, the constitution, public order, or public morals in the state where recognition or enforcement of the conciliation is sought.”

The authority requesting recognition or enforcement of the conciliation must submit an authenticated copy thereof, along with an official certificate from the judicial authority that approved it, confirming that...

(1) Convention of the International Bank for the Settlement of Investment Disputes (ICSID), signed in Washington on 17/03/1965, and the Convention establishing the International Centre for Settlement of Investment Disputes, King Abdulaziz bin Abdul Salam, Al-Jazirah Newspaper, Issue No. 1595, Tuesday, 7 Rajab 1430 AH.

...that it has the force of an enforceable instrument. In this case, paragraph (3) of Article (34) of this agreement applies (1).

Third: The Accession of the Kingdom of Saudi Arabia to the Singapore Convention on Mediation:

“The Kingdom signed the United Nations Convention on International Settlement Agreements Resulting from Mediation, known as the ‘Singapore Convention on Mediation,’ to be among the first countries to sign this international agreement in the field of resolving cross-border commercial disputes through mediation.”

The Kingdom was represented in signing the agreement by the Deputy Minister of Commerce and Investment for Policies and Regulations, at the signing ceremony held in the Republic of Singapore on 7 August 2019, corresponding to 6 Dhul-Hijjah 1440 AH. The Saudi Center for Commercial Arbitration also participated, represented by an official high-level delegation.

This step comes after the participation of the Saudi Center for Commercial Arbitration, along with many governmental entities, in international efforts aimed at facilitating the Kingdom of Saudi Arabia’s accession as a member of the Singapore Convention. Among those efforts was the recommendation that the Kingdom be among the first signatory countries.

(1) Riyadh Arab Agreement for Judicial Cooperation, and Abdulaziz Abdullah Al-Salem, Al-Jazirah Newspaper, Issue No. 1595, Tuesday, 7 Rajab 1435 AH.

...and to highlight the international standing that the Kingdom enjoys and its reflections on enabling the development of institutional arbitration both locally and internationally.

The Council of Ministers had previously issued a decision authorizing the Minister of Commerce and Investment—or his representative—to sign the United Nations Convention on International Settlement Agreements Resulting from Mediation, during the Council session held on 23/07/2019, corresponding to 20/11/1440 AH.

The opening of the signing of the “Singapore Convention on Mediation” came after three years of intensive discussions and drafting of the agreement within the framework of the “UNCITRAL” Commission, with the participation of 85 member states and 35 non-governmental organizations. The text of the convention was adopted by the United Nations General Assembly on 18 December 2018.

The convention provides a unified and effective framework for the enforcement of international settlement agreements resulting from mediation, and for enabling the parties to those agreements to rely on them. It is similar in its function to the framework provided by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the “New York Convention.”

The Singapore Convention has been described as a key tool in facilitating international trade and promoting mediation as an effective alternative method for dispute resolution.

...commercial disputes, and the convention ensures that the settlement reached by the parties becomes binding and enforceable (1).

After clarifying the origin of mediation in the Kingdom of Saudi Arabia from the perspective of international agreements, we move to the origin of mediation within the Kingdom itself, through activating the mediation and reconciliation clause in government contracts with others, such as foreign investors. The details of this are as follows:

Second Element: Inclusion of the Mediation Clause in Government Contracts:

The Government of the Kingdom of Saudi Arabia has, since its early days, been keen to resolve disputes amicably. This is reflected in its signing of international agreements, as well as in its internal regulations and laws, as previously mentioned. It is also reflected in the inclusion of mediation and reconciliation clauses in its government contracts with foreign investors.

Among the examples of including mediation and reconciliation provisions in government contracts with foreign investors is what was stipulated in Article (28) of the Petroleum Investment Agreement concluded over sixty years ago, which provided that:

“If any dispute or disagreement arises between the Government and the company regarding the interpretation or implementation of this agreement...”

(1) Official website of the Saudi Press Agency: <https://www.spa.gov.sa>

Official website of the Ministry of Commerce: <https://mc.gov.sa>

Royal Decree No. (M/96) approving the Kingdom’s accession to the United Nations Convention on International Settlement Agreements Resulting from Mediation.

Official website of the United Nations Commission on International Trade Law (UNCITRAL): <https://uncitral.un.org>

...or the interpretation of any part of it, or its implementation, or any matter related to it, or to the rights of either party or their affiliates, and the two parties fail to agree on resolving it by another method, the dispute shall be referred to two arbitrators, each party appointing one arbitrator, and the two arbitrators shall choose a third before commencing arbitration. Each party shall appoint its arbitrator within thirty days from the date of the other party's request in writing.

If the arbitrators fail to agree on appointing the third arbitrator, the Government and the company shall agree on appointing an arbitrator, and if they fail to do so, the company may request the President of the Permanent Court of International Justice to appoint an arbitrator. The decision of the arbitrators shall be final and binding. If the arbitrators disagree, the decision of the third arbitrator shall prevail. The place of arbitration shall be agreed upon by the two parties, and if they fail to agree, it shall be in The Hague, Netherlands (1).

After clarifying the origin of mediation in the Kingdom of Saudi Arabia at the governmental level since the era of the founding King Abdulaziz Al Saud (may Allah have mercy on him), through the activation of mediation and reconciliation clauses in government contracts with others, such as foreign investors, a question arises here:

Has the Kingdom of Saudi Arabia explicitly stipulated in its regulations the requirement to resort to mediation in disputes?

This will be answered in the following section.

(1) *Umm Al-Qura* Newspaper, Friday, 28 Rabi' Al-Awwal 1352 AH, corresponding to 21 July 1933 AD, Issue No. 449, Year Nine.

Third Element: Regulations:

Many regulations stipulate resorting to reconciliation between disputing parties. Among the modern regulations that provide for resorting to reconciliation is the **Commercial Courts Law**, issued by Royal Decree No. (M/93) dated 15/08/1441 AH.

Article (8) of the law states:

“The Implementing Regulations shall specify the procedures for reconciliation and mediation, including the cases in which disputing parties must resort to reconciliation and mediation before filing a lawsuit. The duration of such procedures shall not exceed thirty (30) days from the date of commencement, unless the parties agree to a longer period. (1)”

To activate mediation and facilitate its procedures for disputing parties, the Council of Ministers issued Resolution No. (103) dated 08/02/1434 AH establishing the Reconciliation Center at the Ministry of Justice. Article (2) of the Regulation of the Reconciliation Center states:

“A center shall be established at the Ministry named (Reconciliation Center), and its work shall be conducted in accordance with the provisions of this regulation.”

(1) This regulation was preceded by provisions in the Commercial Court Law issued by Royal Decree No. (32) dated 15/01/1350 AH. Article (42) states:

“If reconciliation is conducted between the parties before the court, the minutes of reconciliation shall be recorded, signed by the judge who conducted it, and appended to the case file. A certified copy shall be delivered to each party. The provisions of this article shall be followed in all courts.”

This article was canceled following the issuance of the Law of Procedure before Sharia Courts by Royal Decree No. (M/1) dated 22/01/1435 AH. It is mentioned here as a reference to illustrate what has been discussed in this section regarding the origin and historical stages through which mediation has passed.

Article (4) states:

“Reconciliation offices shall be established in court premises or notary offices, and each office shall consist of one or more conciliators selected from the ministry’s staff or from state employees—after obtaining approval from their respective authorities—or from others who meet the conditions determined by the minister in a decision issued by him. (1)”

Following that, the mentioned Council of Ministers resolution established an independent entity under Resolution No. (257), dated 14 Jumada Al-Akhirah 1435 AH (corresponding to 14 April 2014), namely the **Saudi Center for Commercial Arbitration (2)**, with its headquarters in the city of Riyadh (3).

Subsequently, what confirms the reliance on arbitration and mediation centers in dispute resolution—particularly for disputes involving government entities—was the issuance of the Supreme Order (Royal Directive) No. (28004), dated...

(1) Regulation of the Reconciliation Center issued by Council of Ministers Resolution No. (103) dated 08/02/1434 AH. It consists of ten articles covering: establishment of the center, defining its functions, establishing reconciliation offices, appointing a Secretary-General for the center, his duties, and the key obligations of reconciliation offices, including the right of disputing parties to conduct reconciliation, and the effects of reconciliation.

(2) The Saudi Center for Commercial Arbitration issued the **Commercial Mediation Rules** on 27 Sha’ban 1437 AH, corresponding to 31 May 2016 AD. These rules include mediation procedures such as: definitions and scope of application, commencement of mediation, representation, appointment of the mediator, the duty of disclosure and impartiality, the place of mediation sessions, confidentiality and privacy, the existence of meetings or summaries of sessions, termination of mediation, fees and costs of mediation, submission of documents, and interpretation of the rules.

(3) Official website of the Saudi Center for Commercial Arbitration.

...dated 22/05/1440 AH, after reviewing the letter of His Excellency the Secretary-General of the Council of Ministers, and the memorandum of His Excellency the Minister of Commerce and Investment, which included: a request to approve the inclusion of a dispute resolution clause through the Saudi Center for Commercial Arbitration, or one of the licensed arbitration centers, from the permanent committee, in government contracts.

The Council of Ministers then issued a directive stating:

“First: Government entities and state-owned companies—in the event they wish to settle their disputes with foreign investors through arbitration—after obtaining the necessary approvals in accordance with the applicable procedures, shall ensure that arbitration is conducted within the Kingdom at the Saudi Center for Commercial Arbitration or at one of the licensed arbitration centers referred to in Council of Ministers Resolution No. (107) dated 08/02/1437 AH.

Second: The Ministry of Commerce and Investment shall review the results of applying what is stated in paragraph (First) above after five years from the date of its approval. (1)”

Third Topic: Cases in Which Mediation Must Be Conducted:

The Commercial Courts Law and its Implementing Regulations govern the requirement to conduct mediation in certain specific disputes. Article (8) of the law states that:

“The Implementing Regulations shall specify the procedures for reconciliation and mediation, including the cases in which lawsuits must first be presented to reconciliation and mediation...”

(1) Administrative Circular issued by the Deputy Minister of Justice No. (13/2/6775) dated 28/05/1440 AH.

...provided that the duration of those procedures does not exceed thirty (30) days from the date of commencement, unless the parties agree to a longer period.

These disputes and cases in which mediation must be conducted are categorized under the following elements:

First Element: Explicit Agreement of the Parties to Resort to Mediation:

The Implementing Regulations of the Commercial Courts Law explicitly state in Article (85), paragraph (d), that if the lawsuit submitted to the judiciary is related to a contract between the disputing parties that includes a condition requiring resort to mediation before filing the case, then mediation must be undertaken before registering the lawsuit⁽¹⁾.

The jurisprudential basis for this is the binding nature of contractual conditions, as reflected in the hadith of the Prophet (peace be upon him):

“Muslims are bound by their conditions. ⁽²⁾”

(1) The Implementing Regulations of Article (85) state: “Resorting to reconciliation and mediation must be undertaken before filing the case.” This applies to disputes arising from contracts that include a clause requiring resort to reconciliation, mediation, or amicable settlement before resorting to the judiciary.

(2) Narrated by Abu Dawood in his Sunan, vol. 4, p. 243, authenticated by Shu‘ayb al-Arna’ut — *Musnad Ahmad*, commentary by Ahmad Shakir, Dar al-Risalah, 1st edition, 1430 AH – 2009 AD; also authenticated by Al-Albani in *Sahih al-Jami‘ al-Saghir*, p. 113, Dar al-Maktab al-Islami.

Second Element: Disputes Arising from Partnership Contracts Stipulated in the Civil Transactions Law:

The Implementing Regulations of the Commercial Courts Law state in Articles (8) and (85), paragraph (a), that the cases stipulated in paragraph (3) of Article (16) of the law are among those in which mediation must be undertaken before filing the lawsuit (1).

Upon review, it appears that what is intended after the amendment of the article is: disputes arising from partnership contracts as stipulated in the Civil Transactions Law (2).

Third Element: Disputes Arising Between Traders Due to Their Original or Subsidiary Commercial Activities:

The Implementing Regulations of the Commercial Courts Law state in Articles (8) and (85), paragraph (b), that the cases stipulated in paragraph (1) of Article (11) of the regulations are among those in which mediation must be undertaken before filing the lawsuit.

(1) The Implementing Regulations of Article (85) state: “Resorting to reconciliation and mediation must be undertaken before filing any of the following cases: (a) the cases stipulated in paragraph (3) of Article (16) of the Law.”

(2) Article (16) of the Commercial Courts Law states: “The court shall have jurisdiction to hear the following: (1) disputes between partners in companies ...” Paragraph (3) of this article was amended by Royal Decree No. (M/91) dated 29/08/1441 AH, to read: “Disputes arising from partnership contracts stipulated in the Civil Transactions Law.”

...before registering the lawsuit (1).

Upon review, it appears that paragraph (a) refers to the types of cases stipulated in paragraphs (1) and (2) of Article (16) of the Law (2), provided that the value of the original claim does not exceed one million riyals(3).

By referring to this article, it is found that what is intended by the first type of these cases is: disputes arising between traders due to their original or subsidiary commercial activities. (3)

It should be noted here that there is a formal and substantive drafting error in the Implementing Regulations, specifically in paragraph (b) of Article (85), which can be summarized in two aspects:

First: It refers to another article concerning the jurisdiction of first-instance circuits composed of a single judge. This referenced article is unrelated in subject matter to the main article, resulting in a substantive inconsistency.

(1) The Implementing Regulations of Article (85) state: “Resorting to reconciliation and mediation must be undertaken before filing any of the following cases: (b) the cases stipulated in paragraph (1) of Article (11) of the Regulations.”

(2) Article (11) of the Implementing Regulations states: “First-instance circuits in the court shall be composed of a single judge, and they shall have jurisdiction to hear the following cases: (1) and (2) cases stipulated in Article (16) of the Law, if the value of the original claim does not exceed one million riyals.”

(3) Article (16) of the Commercial Courts Law states: “The court shall have jurisdiction to hear: (1) disputes arising between traders due to their original or subsidiary commercial activities.”

Second Aspect: The wording of paragraph (a) of Article (11) of the Implementing Regulations—which is referred to—stipulates that the value of the original claim must not exceed one million riyals. This implies that disputes arising between traders due to their original or subsidiary commercial activities, if the value of the original claim exceeds one million riyals, do not require mediation before filing the lawsuit before the judiciary. This is illogical.

In my view, the solution to this issue is to disregard the value of the claim and limit the requirement to the type of dispute only. Accordingly, mediation should be mandatory in disputes arising between traders due to their original or subsidiary commercial activities, regardless of the value of the original claim.

Fourth Element: Cases Filed Against a Trader in Commercial Contract Disputes:

The Implementing Regulations of the Commercial Courts Law state in Articles (8) and (85), paragraph (b), that the cases stipulated in paragraph (1) of Article (11) of the Regulations are among those in which mediation must be undertaken before filing the lawsuit.

Upon review (1), it appears that paragraph (a) refers to the types of cases stipulated in paragraphs (1) and (2) of Article (16) of the Law.

(1) The Implementing Regulations of Article (85) state: “Resorting to reconciliation and mediation must be undertaken before filing any of the following cases: (b) the cases stipulated in paragraph (1) of Article (11) of the Regulations.”

...of the law if the value of the original claim does not exceed one million riyals⁽¹⁾.

By referring to this article, it appears that the second type of these cases is: lawsuits filed against a trader in disputes arising from commercial contracts ⁽²⁾.

It should be noted that paragraph (b) of Article (85) of the Implementing Regulations contains both a formal and substantive drafting error, as previously mentioned.

In my view, the solution to this issue is the same as stated in the previous element—namely, to disregard the value of the claim and limit the requirement to the type of dispute only. Accordingly, mediation should be mandatory in lawsuits filed against a trader in disputes arising from commercial contracts, regardless of the value of the original claim.

It is also noted that Article (16) of the Law placed a condition on this type of case, which is that the value of the original claim...

(1) The Implementing Regulations of Article (11) state: “First-instance circuits in the court shall be composed of a single judge, and they shall have jurisdiction to hear the following cases: (1) and (2) cases stipulated in Article (16) of the Law, if the value of the original claim does not exceed one million riyals.”

(2) Article (16) of the Commercial Courts Law states: “The court shall have jurisdiction to hear: (2) lawsuits filed against a trader in disputes arising from commercial contracts, if the value of the original claim in the case does not exceed one hundred thousand riyals, and the appellate circuits shall have jurisdiction when this amount is exceeded.”

...if the value of the claim exceeds one hundred thousand riyals, and the higher judicial circuits shall have jurisdiction when this amount is exceeded.

Fifth Element: Lawsuits and Requests Related to the Judicial Guard, Trustee, Receiver, and Experts, and the Like:

The Implementing Regulations of the Commercial Courts Law state in Articles (8) and (85), paragraph (b), that the cases stipulated in paragraph (1) of Article (11) of the Regulations are among those in which mediation must be undertaken before filing the lawsuit.

Upon review⁽¹⁾, it appears that paragraph (b) refers to the types of cases stipulated in paragraphs (8) and (9) of Article (16) of the Law⁽²⁾, regardless of the value of the claim, whenever the claim relates to matters specified in paragraph (1/A) of this article.

By referring to this article, it is found that what is intended by the first type of these cases is:

(1) The Implementing Regulations of Article (85) state: “Resorting to reconciliation and mediation must be undertaken before filing any of the following cases: (b) the cases stipulated in paragraph (1) of Article (11) of the Regulations.”

(2) The Implementing Regulations of Article (11) state: “First-instance circuits in the court shall be composed of a single judge, and they shall have jurisdiction to hear the following cases: (1) and (2) cases stipulated in Article (16) of the Law, if the value of the original claim does not exceed one million riyals, whenever the claim relates to matters specified in paragraph (1/A) of this article.”

...lawsuits and requests related to the judicial guard, trustee, receiver, appointed expert, and the like (1).

The article also stipulates that the dispute must be related to a case that falls under the jurisdiction of the Commercial Court.

Sixth Element: Compensation Claims:

The Implementing Regulations of the Commercial Courts Law state in Articles (8) and (85), paragraph (b), that the cases stipulated in paragraph (1) of Article (11) of the Regulations are among those in which mediation must be undertaken before filing the lawsuit.

Upon review (2), it appears that paragraph (b) refers to the types of cases stipulated in paragraphs (8) and (9) of Article (16) of the Law, regardless of the value of the claim (3), whenever the claim relates to matters specified in paragraph (1/A) of this article.

(1) Article (16) of the Commercial Courts Law states: “The court shall have jurisdiction to hear: ... (8) lawsuits and requests related to the judicial guard, trustee, receiver, appointed expert, and the like, whenever the dispute is related to a case falling under the jurisdiction of the Commercial Court.”

(2) The Implementing Regulations of Article (85) state: “Resorting to reconciliation and mediation must be undertaken before filing any of the following cases: (b) the cases stipulated in paragraph (1) of Article (11) of the Regulations.”

(3) The Implementing Regulations of Article (11) state: “First-instance circuits in the court shall be composed of a single judge, and they shall have jurisdiction to hear the following cases: (b) cases stipulated in paragraphs (8) and (9) of Article (16) of the Law, whenever the claim relates to one of the matters specified in paragraph (1/A) of this article.”

It appears that the second type of these cases refers to: compensation claims⁽¹⁾.

The article also stipulates that such claims must arise from a prior case that has already been considered by the Commercial Court.

Seventh Element: Cases Where the Parties Are Spouses or Related up to the Fourth Degree:

The Implementing Regulations of the Commercial Courts Law state in Articles (8) and (85), paragraph (c), that cases in which the parties are spouses or related up to the fourth⁽²⁾ degree must undergo mediation before filing the lawsuit⁽³⁾.

(1) Article (16) of the Commercial Courts Law states: “The court shall have jurisdiction to hear: ... (9) compensation claims arising from a prior case that has already been considered by the court.”

(2) Kinship up to the fourth degree includes: children of paternal and maternal uncles, children of paternal and maternal aunts, as defined in the Implementing Regulations of the Law of Procedure before Sharia Courts, issued by Ministerial Resolution No. (8344) dated 07/08/1441 AH.

(3) The Implementing Regulations of Article (85) state: “Resorting to reconciliation and mediation must be undertaken before filing any of the following cases: (c) cases in which the parties are spouses or related up to the fourth degree.”

The jurisprudential (fiqh) basis that supports the regulatory obligation mentioned in these types of disputes is that this obligation serves an overriding public interest, and it is considered among matters of Sharia policy, for the following reasons:

First Reason: What scholars have established is that regulations enacted in various fields—including commercial regulations—which are consistent with the principles and foundations of Sharia, and which achieve public interest, are considered part of Sharia policy (1).

Second Reason: What the International Islamic Fiqh Academy decided in its Resolution No. (141) (7/15) regarding *public interests (al-masalih al-mursalah)* and their contemporary applications. The resolution states:

“The ruler’s actions concerning his subjects are dependent on public interest. He must take that into account in managing their affairs, and the community must obey him in that. Public interests have broad applications in the affairs of society, including economic, social, educational, administrative, and judicial fields, among others. (2)”

(1) See: *Sources of Commercial Ruling*, by Prof. Dr. Arif bin Saleh Al-‘Ala, p. 85, Judiciary Journal, Issue 6, Jumada Al-Akhirah 1437 AH – March 2016 AD.

(2) Full text: “In the name of Allah, the Most Gracious, the Most Merciful. Praise be to Allah, Lord of the worlds, and peace and blessings be upon our master Muhammad, the Seal of the Prophets, and upon his family and companions altogether. Resolution No. (141) (7/15) concerning public interests (al-masalih al-mursalah) and their contemporary applications.”

Issued by the International Islamic Fiqh Academy affiliated with the Organization of Islamic Cooperation, during its fifteenth session held in Muscat (Sultanate of Oman) from 14–19 Muharram 1425 AH, corresponding to 6–11 March 2004 AD, after reviewing the submitted research on the topic of public interests and after listening to the discussions held on it.

Conclusion of the Discussion:

The cases in which resorting to mediation is required before filing a lawsuit before the Commercial Court are as follows:

- The explicit agreement of the parties to resort to mediation.
 - Disputes arising from partnership contracts stipulated in the Civil Transactions Law.
 - Disputes arising between traders due to their original or subsidiary commercial activities.
 - Lawsuits filed against a trader in disputes arising from commercial contracts.
-

There is consensus among Muslims that Sharia rulings are based on achieving benefits and preventing harm. The following has been established:

(1) What is meant by benefit is preserving the objectives of the Lawgiver, which are the protection of religion, life, intellect, lineage, and wealth.

Benefit is divided into: that which the Lawgiver has explicitly indicated, or what is recognized through consideration or annulment, and it falls under the general objectives.

(2) It must be ensured that benefit meets certain criteria: that it is real and not illusory, that it is general and not specific, that it does not conflict with another benefit that is more deserving or equal to it, and that it aligns with the objectives of Sharia.

Scholars have established precise standards to distinguish between types of benefits, based on their relation to people's lives. They classified them into three categories according to their importance: necessities, needs, and enhancements.

(3) It is established that the ruler's actions concerning his subjects are dependent on public interest; therefore, he must take that into account in managing their affairs, and the community must obey him in that. Public interest has wide applications in the affairs of society, including economic, social, educational, administrative, and judicial fields, among others.

This demonstrates the comprehensiveness and flexibility of Sharia in addressing the needs of human societies, as discussed in this research. And Allah knows best.

Disputes arising from commercial contracts, lawsuits and requests related to the judicial guard, trustee, receiver, appointed expert, and the like, compensation claims, and cases where the parties are spouses or related up to the fourth degree.

After clarifying the concepts of the research title terms, the origin of mediation, its historical stages, and the types of cases in which resorting to mediation is required, we move to explaining the results and rulings that link regulation and judiciary regarding the legal obligation to resort to mediation in these types of cases before filing the lawsuit, as follows:

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First Section

Non-Acceptance of the Lawsuit Without Mediation

The requirement to resort to mediation before filing a lawsuit before the judiciary in the disputes and cases mentioned in the previous section results in the following: the lawsuit shall not be accepted before the court. The non-acceptance of the lawsuit takes two forms:

First Form: The competent administration at the Commercial Court issues a decision not to register the lawsuit due to the failure to complete mediation procedures. A request for registration may be submitted again after completing mediation procedures within fifteen (15) days from the date of notification. If the lawsuit is registered after completing mediation, it shall be considered filed from the date of submitting the registration request. If no request is submitted within this period, the application shall be deemed as if it had not been filed.

The administration must prove the date of submitting the registration request in all cases. The applicant has the right to file a grievance before the President of the Court regarding the refusal to register within fifteen (15) days from the date of being notified of the refusal. The President of the Court—or a judge he delegates—shall decide on this grievance, and his decision shall be final⁽¹⁾.

(1) According to Article (9) and Article (85) of the Implementing Regulations of the Commercial Courts Law, it is stipulated that a period shall be set for resorting to mediation and determining the outcome of reconciliation, whether through settlement or partial reconciliation. If no proof of initiating mediation procedures is submitted within the period specified in paragraph (1) of Article (8) of the Law, the lawsuit shall not be registered without completing the mediation process. The provisions of Article (21) of the Law shall apply in the event that the claim is not submitted within the period stipulated in this article.

Second Form: The judiciary rules that the lawsuit is not admissible due to the failure to submit a request for mediation procedures.

Some jurists have stated that the judge should order the disputing parties to seek reconciliation if it has not been attempted⁽¹⁾

. It is mentioned in *Al-Mughni*:

“The disputants should be returned until they reconcile; otherwise, the judgment of the judiciary will result in division among the people. ⁽²⁾”

The author of *Al-Turuq Al-Hukmiyyah* affirmed that Allah Almighty sent messengers and revealed the scriptures so that people may uphold justice, and that justice is the foundation of the Sharia of Allah and His religion.

The text of Articles (11) and (20) of the Law states:

1. “The competent administration in the court shall register the statement of claim if it meets the requirements stipulated in Article (20) of the Law.”
2. “If the administration decides not to register the lawsuit due to failure to complete mediation procedures, the applicant may re-submit the request within fifteen (15) days from the date of notification. If the lawsuit is registered after completing mediation, it shall be considered filed from the date of submitting the registration request. If no action is taken within this period, the request shall be deemed as if it had not been submitted. The administration must prove the date of submission of the registration request in all cases.
3. The applicant has the right to file a grievance before the President of the Court regarding the refusal to register within fifteen (15) days from the date of notification of the refusal. The President of the Court—or a judge delegated by him—shall decide on this grievance, and his decision shall be final.”

(1) See: *Al-Mughni*, by Muwaffaq al-Din Abu Muhammad Abdullah ibn Ahmad ibn Qudamah, vol. 14, p. 5, edited by: Abdullah al-Turki and Abdul Fattah al-Hilu, Dar Alam al-Kutub, 5th edition, 1426 AH – 2005 AD.

(2) Previous reference, vol. 14, p. 30.

Any method through which justice and fairness are achieved is part of the religion, and not contrary to it; rather, it is included within Sharia policy (1).

Considering the status of reconciliation and its virtue in Islamic Sharia—indeed, its preference over adjudication in disputes—we find that the judicial ruling applying the regulatory texts issued by the authority, which results in the non-acceptance of the lawsuit without mediation, falls within Sharia policy.

Among the judicial rulings and practical applications issued regarding the non-acceptance of lawsuits due to failure to complete mediation procedures is the ruling issued by the Commercial Court in Riyadh, which stated in its judgment: “The lawsuit is not accepted procedurally,” which is explained in its reasoning. May Allah grant success, and peace and blessings be upon our Prophet Muhammad and his family and companions.

The judicial panel based its ruling on the following reasons:

“It was previously established that consideration of this commercial case requires the completion of the formal requirements stipulated in the Commercial Courts Law and its Implementing Regulations. It was confirmed to the panel from the case documents and supporting evidence that the plaintiff did not submit a request for reconciliation with the defendant. Since paragraph (b) of Article (85) of the Implementing Regulations of the Commercial Courts Law stipulates the obligation to submit a request...”

(1) *Ibn al-Qayyim, I'lam al-Muwaqqi'in*, vol. 4, pp. 13–14, Dar al-Bayan.

“...to undertake reconciliation in this case before filing it; therefore, the panel concludes to issue its ruling as stated in its operative part. (1)”

(1) Judgment: Commercial Court in Riyadh, Case No. (404247230) dated 26/12/1442 AH – Decision No. (47447) dated 07/07/1443 AH. Source: Ministry of Justice, Commercial Court, Riyadh.

Facts: The facts of this case, as required for the judgment, are summarized as follows:

On 21/04/1442 AH, the plaintiff filed his lawsuit, in which he requested that the Commercial Court in Riyadh order the defendant to pay him an amount of (...) riyals, based on a contractual relationship between them related to business activities. The plaintiff stated that he had delivered to the defendant works under an agreement, and after completing the works, a dispute arose between them regarding the execution and obligations, and the plaintiff demanded compensation amounting to (...) riyals. The court reviewed the case and the supporting documents, held several hearings, and recorded the proceedings in the session minutes. On 29/10/1442 AH, the plaintiff attended through his legal representative, and the defendant also appeared.

The court examined the case in accordance with Article (85) of the Implementing Regulations of the Commercial Courts Law, which requires that mediation procedures be completed before filing the lawsuit. It became clear to the court that the plaintiff had not submitted a request for reconciliation prior to filing the case. Accordingly, and based on paragraph (2) of Article (16) of the Commercial Courts Law, the court ruled that the lawsuit is not admissible in form due to failure to fulfill the required procedures before filing.

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...along with its attachments and the report of the engineering office, Report No. (2200).

The defendant's counsel responded by requesting a ruling of inadmissibility of the lawsuit, arguing that the plaintiff is a trader and failed to resort to reconciliation before filing the case through the designated platform. The plaintiff's counsel replied that there is an error in the registration procedures and that the lawsuit had been filed approximately a month earlier.

After reviewing the case documents and hearing the parties, the court directed them to submit their memoranda through the electronic filing system. The defendant's counsel submitted a memorandum arguing that the lawsuit should be dismissed in form, as the procedural requirements and supporting documents necessary for accepting the lawsuit were not fulfilled. These include completing reconciliation procedures before filing the claim, as required under Article (85) of the Implementing Regulations of the Commercial Courts Law.

The Regulations stipulate that resorting to reconciliation and mediation is mandatory before filing certain types of cases, including those referred to in paragraph (b) of Article (85), and those specified in paragraphs (1) and (2) of Article (16) of the Law, provided that the value of the original claim does not exceed one million riyals.

It was established from the case documents that the plaintiff did not submit a request for reconciliation prior to filing the lawsuit. Accordingly, the provisions of Article (21) of the Law apply in the case of failure to meet the procedural requirements.

The court also noted that the objection raised by the plaintiff regarding a procedural error in registration does not substitute for fulfilling the requirement of reconciliation. There is a clear distinction between procedural notification and reconciliation procedures, as stated in Article (71), paragraph (2) of the Implementing Regulations.

Based on the above, and after reviewing the case file and its supporting documents, the court issued its judgment based on the following reasons:

Reasons:

It has been established that the consideration of this commercial case requires fulfilling the procedural conditions stipulated in the Commercial Courts Law and its Implementing Regulations. It is clear from the case documents that the plaintiff did not submit a request for reconciliation with the defendant prior to filing the lawsuit.

Since paragraph (b) of Article (85) of the Implementing Regulations of the Commercial Courts Law stipulates the obligation to submit a request for reconciliation before filing the lawsuit, the panel concludes to issue its ruling as stated in its operative part.

Operative Part of the Judgment:

The lawsuit is not admissible in form, as explained in the reasoning above. May Allah grant success, and peace and blessings be upon our Prophet Muhammad and his family and companions.

Head of the Panel:

Appeal:

Praise be to Allah, and peace and blessings be upon the Messenger of Allah.

Thereafter: The First Appellate Circuit—based on Case No. (582) dated 1443 AH—issued its decision after reviewing the appeal submitted by the plaintiff in the case, composed of: Judge (.....), Presiding Judge; Judge (.....), Member; Judge (.....), Member.

Facts:

The appellant filed a lawsuit requesting the defendant to pay an amount of (.....) riyals, representing the total value of compensation claims for defects and a penalty clause. The court of first instance issued its judgment declaring the lawsuit inadmissible in form.

Upon reviewing the case facts and the grounds of the judgment, the appellate court found that the appeal lacked merit. The appellant objected to the ruling, arguing that mediation procedures were not mandatory and that notification of the claim had been completed. He also requested the defendant to pay litigation costs amounting to (.....) riyals.

The appellate circuit convened to consider the appeal.

Reasons:

Since the appeal was submitted within the legally prescribed period, it is formally acceptable. However, on the merits, the appellate court finds that the appellant's claims are not valid. Accordingly, the appeal is rejected, and the judgment of the first instance is upheld, based on the provisions of the Commercial Courts Law and its Implementing Regulations.

Second Section

Completion of Mediation Procedures

Introduction and Structure:

The requirement to resort to mediation before filing a lawsuit before the judiciary in the disputes and cases mentioned in the preliminary section results in the following: the lawsuit shall not be accepted before the court except after completing mediation procedures, in accordance with the Commercial Courts Law and its Implementing Regulations, and based on the agreement of the parties on the specific procedures mentioned in the mediation agreement between them.

If there are no specific provisions in the Law or its Implementing Regulations, and no agreement between the parties on specific procedures, then the provisions governing mediation shall be those stipulated in the Rules of Work of Reconciliation Offices and their procedures (1).

Mediation procedures, according to the Rules of Work in Reconciliation Offices (2), are as follows:

Operative Part of the Judgment:

“The First Commercial Appellate Circuit ruled that the appeal submitted in this case is not admissible.”

Member: (.....) Member: (.....) Presiding Judge: (.....)

(1) Article (9) and Article (85) of the Implementing Regulations of the Commercial Courts Law state:

“If there is no specific provision in the Law or its Implementing Regulations, and no agreement between the parties on specific procedures, then the provisions applicable to mediation shall be those stipulated in the Rules of Work in Reconciliation Offices and their procedures.”

(2) Ministerial Resolution No. (5599) issued by the Minister of Justice on 29/02/1440 AH, approving the Rules of Work in Reconciliation Offices and their procedures, which include the procedures for reconciliation.

First Topic: Jurisdiction and Procedures:

The Rules of Work in Reconciliation Offices emphasize the necessity of observing jurisdiction in cases presented before reconciliation offices for the purpose of mediation. Reconciliation offices handle disputes referred to them by the court, as well as disputes brought before them by one or more of the parties. Reconciliation offices do not handle matters in which reconciliation is not permissible under Sharia, nor matters in which the parties do not have the right to reconcile, or that violate the law (1).

As for the procedures, they are divided into the following elements:

First Element: Procedures for Registering the Reconciliation Request:

One of the parties submits a request for reconciliation to the Reconciliation Center or to one of its offices, using the approved form. The request is then registered on the same day it is submitted, and it is assigned a unique number distinguishing it from other requests. The Director then...

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- Chapter One:** General Provisions
 - Chapter Two:** Reconciliation
 - Chapter Three:** Registered Conciliators
 - Chapter Four:** Reconciliation Procedures
 - Chapter Five:** Minutes of Reconciliation
 - Chapter Six:** Final Provisions

(1) Article (2): Referral to Reconciliation Offices and their jurisdiction:

- 1. Disputes referred by the courts.
- 2. Disputes submitted by one or more of the parties to the Reconciliation Offices, either initially or after the commencement of the case, or at any stage of the proceedings, with due consideration to notifying the authority handling the case.
- 3. Reconciliation Offices shall not handle matters in which reconciliation is not permissible under Sharia, nor matters in which the parties do not have the right to reconcile, or that violate the law.

The Reconciliation Office appoints a conciliator or more to handle the reconciliation request, from among the ministry’s staff or the registered conciliators, taking into account the reconciliation rules and instructions issued by the center in this regard, and considering the preference of the parties whenever possible. The office to which the request is submitted—or the authority designated by the Reconciliation Center—shall undertake the reconciliation process (1).

Second Element: Scheduling and Notification Procedures:

The Reconciliation Office sets a date for the reconciliation session within a period not exceeding fourteen (14) days from the date of registering the reconciliation request. The parties to the reconciliation are notified of the session date through the Reconciliation Office or the applicant.

If one or more of the parties fail to attend, the office sets another date within seven (7) days from the first date, taking into account what is suitable for the parties whenever possible. If the parties fail to attend again or cannot be notified, the reconciliation request is recorded as unsuccessful, unless the center decides otherwise.

(1) Article (13): Registration of Reconciliation and its Cases:

1. ...
2. If one or more of the parties submit a reconciliation request without a referral from the court, the request shall be submitted to the Reconciliation Center or one of its offices using the approved form.
3. The Reconciliation Office to which the request is submitted—or the authority designated by the center—shall handle the reconciliation.
4. The reconciliation request shall be registered on the day it is received and assigned a unique reference number.
5. The Director of the Reconciliation Office appoints a conciliator or more to handle the reconciliation request, from among the ministry’s staff or the registered conciliators, taking into account the reconciliation rules and instructions issued by the center in this regard, and considering the preference of the parties whenever possible.

Reconciliation sessions are held at the Reconciliation Office premises, and may be conducted remotely via electronic means or at another suitable location, provided that the rules and conditions issued by the center in this regard are observed (1).

Third Element: Procedures for Attending Sessions:

Reconciliation sessions are attended by the conciliator and the original parties to the reconciliation, either in person or through their representatives. All parties may also attend before or during the session.

Anyone who attends the reconciliation sessions other than the conciliators must sign an undertaking of confidentiality and a commitment to adhere to the etiquette of reconciliation sessions (2).

(1) Article (14): Scheduling and Location of Sessions, and Notification of the Parties:

1. Unless the center stipulates a different period in the reconciliation document, the Reconciliation Office shall set a date for the reconciliation session within a period not exceeding fourteen (14) days from the date of registering the reconciliation request. The parties shall be notified of the session date through the Reconciliation Office or the applicant. In case one or more parties fail to attend, another date shall be set within seven (7) days from the first date, taking into account what is suitable for the parties whenever possible. If one or more parties fail to attend again or cannot be notified, the reconciliation request shall be recorded as unsuccessful, and the competent court shall be notified accordingly.

Reconciliation sessions shall be held at the Reconciliation Office premises, and may be conducted remotely via electronic means or at another suitable location, provided that the rules and conditions issued by the center in this regard are observed.

(2) Article (15): Attendance at Reconciliation Sessions:

Attendance at reconciliation sessions shall be limited to the following:

1. The conciliator.

Fourth Element: Procedures of Reconciliation Sessions:

The reconciliation session proceeds as follows:

The conciliator begins the session by verifying the identities of the parties and their legal and regulatory eligibility to conduct reconciliation. The conciliator then seeks to guide the parties toward reaching a settlement that resolves the dispute, in accordance with the provisions of Islamic Sharia and the applicable regulations, and in line with the rules set out in Article (4), as well as any procedural guidelines issued by the center.

If there are multiple disputes between the parties—even if they fall under different jurisdictions—the conciliator seeks to reach a comprehensive settlement that resolves all such disputes.

The conciliator may use the following methods to reach a settlement:

1. Meeting with one party during or before the session without the presence of the other parties, provided that this does not prejudice the principles of reconciliation or lead to any Sharia violation.
2. Meeting with the parties without both of them present at the same time, provided that this does not prejudice the principles of reconciliation or lead to any Sharia violation.
3. The original parties to the reconciliation, and their authorized representatives, provided that a valid power of attorney exists granting the agent authority to reconcile. For legal entities, representation shall be by their authorized representative who has the legal authority to conduct reconciliation on their behalf.
4. Anyone whose presence is deemed necessary by the conciliator, with their consent.
5. All parties may attend before or during the reconciliation session.
6. Anyone attending reconciliation sessions other than the conciliators must sign an undertaking of confidentiality and a commitment to adhere to the etiquette of reconciliation sessions.

It is prohibited for the conciliator to use any means of coercion on the parties to the reconciliation to compel them to accept the settlement.

Among the obligations of the parties to the reconciliation is adherence to proper dialogue etiquette and its requirements.

Reconciliation procedures and their deliberations shall be conducted in the Arabic language, unless the parties agree otherwise, provided that the minutes of reconciliation are prepared in Arabic.

More than one reconciliation session may be held, provided that the number does not exceed three sessions, and that the total duration of the procedures does not exceed thirty (30) days from the date of commencement, except in the following cases:

1. Disputes for which the Reconciliation Office determines longer periods.
2. Other disputes, subject to the approval of the Director of the Reconciliation Office, based on the reasons provided by the conciliator (1).

(1) Article (16): Procedures of the Reconciliation Session:

1. The conciliator shall, at the beginning of the session, verify the identities of the parties to the reconciliation and their legal and regulatory eligibility to conduct reconciliation.
2. The conciliator is responsible for managing the reconciliation sessions and must strive to guide the parties toward reaching a settlement that resolves the dispute, in compliance with the provisions of Islamic Sharia and the applicable regulations, and in accordance with the rules set out in Article (4) and any procedural guidelines issued by the center. If there are multiple disputes between the parties—even if they fall under different jurisdictions—the conciliator shall seek to reach a settlement that resolves all such disputes.
3. The conciliator may use appropriate means to reach a settlement, including meeting with one party during or before the session without the presence of the other parties, and may also meet with the parties separately, provided that this does not prejudice the principles of reconciliation or lead to any Sharia violation.

Fifth Element: Confidentiality of Sessions Procedures:

Reconciliation sessions are conducted confidentially, and it is not permissible to disclose any information, documents, or details discussed therein, or what results from them such as a settlement, or to present them as evidence before judicial authorities, dispute resolution committees, or arbitration bodies—except in the following cases and within the limits necessary to achieve the intended purpose:

1. Disclosure required for the enforcement of the settlement agreement.
 2. If one of the parties submits, in litigation or arbitration proceedings, documents or evidence that were presented during reconciliation sessions, or related to the subject matter of the dispute, or that were in their possession or made known to them in a lawful manner before the reconciliation sessions.
 3. Disclosure of the existence of a settlement or the existence of reconciliation procedures in general, without detailing what took place therein.
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4. The conciliator may not use any means of coercion on the parties to the reconciliation to compel them to accept the settlement.
 5. The parties to the reconciliation must adhere to proper dialogue etiquette and the requirements of the reconciliation process.
 6. Reconciliation procedures and deliberations shall be conducted in the Arabic language, unless the parties agree otherwise, provided that the minutes of reconciliation are prepared in Arabic.
 7. More than one reconciliation session may be held, provided that the number does not exceed three sessions, and that the total duration of the procedures does not exceed thirty (30) days from the date of commencement, except in the following cases:
 1. Disputes for which the Reconciliation Office determines longer periods.
 2. Other disputes, subject to the approval of the Director of the Reconciliation Office, based on the reasons provided by the conciliator.

- 4. Disclosure agreed upon by the parties to the dispute.
- 5. Exceptional disclosure required by law, within the limits of its provisions.
- 6. Disclosure that prevents the commission of a crime.
- 7. Disclosure that prevents a violation of the settlement agreement. (1)

The fifth standard of the Code of Ethical Conduct for Mediators, titled “**Confidentiality,**” in paragraph (A) states: “The mediator shall maintain the confidentiality of the information obtained during mediation procedures, unless the parties agree otherwise or the applicable law provides otherwise.” Paragraph (3) of this standard further states:

(1) Article (17): Confidentiality of Reconciliation Sessions:

Reconciliation sessions are conducted confidentially, and it is not permissible to disclose any information, documents, or details discussed therein, or what results from them such as a settlement, or to present them as evidence before judicial authorities, dispute resolution committees, or arbitration bodies—except in the following cases and within the limits necessary to achieve the intended purpose:

- 1. Disclosure required for the enforcement of the settlement agreement.
- 2. If one of the parties submits, in litigation or arbitration proceedings, documents or evidence that were presented during reconciliation sessions, or related to the subject matter of the dispute, or that were in their possession or made known to them in a lawful manner before the reconciliation sessions.
- 3. Disclosure of the existence of a settlement or the existence of reconciliation procedures in general, without detailing what took place therein.
- 4. Disclosure agreed upon by the parties to the dispute.
- 5. Exceptional disclosure required by law, within the limits of its provisions.
- 6. Disclosure that prevents the commission of a crime.
- 7. Disclosure that prevents a violation of the settlement agreement.

“If the mediator participates in a teaching activity, research, or evaluation study regarding mediation, they must not disclose the names of the parties and must adhere to reasonable expectations of confidentiality. (1)”

In completing mediation procedures, the mediator—who is not a judge—must understand the conditions of reconciliation as established by Islamic jurisprudence. Failure to comply with any of these conditions may lead to the invalidity of the settlement and mediation agreement and prevent its enforcement before the Enforcement Court (2).

Among the most important conditions of reconciliation discussed by jurists are:

First Condition: Mutual Consent Between the Parties to the Dispute:

Regarding the requirement of this condition, it is stated: “Reconciliation is permissible between disputing parties unless it contradicts a legal ruling, because it is based on mutual consent and agreement between them, which leads to the transfer of a right from one party to another, either with compensation or without compensation. (3)”

(1) See: Code of Ethical Conduct for Mediators, available at: <https://sadr.org>

(2) According to paragraph (1) of Article (9) of the Implementing Regulations of the Enforcement Law, which states: “Any enforceable instrument that violates Sharia, in whole or in part, must not be enforced to the extent of such violation. If an objection is raised by the enforcement applicant, the circuit shall issue a decision, and such decision shall be subject to appeal procedures.” These regulations were issued by the Minister of Justice pursuant to Decision No. (39933) dated 19/05/1435 AH.

(3) *Al-Wasit fi Sharh Nizam Al-Ahkam*, by Ahmed bin Mohammed Shams Al-Din Al-Sarakhsi, vol. 3, p. 134, Dar Al-Ma‘rifah, Beirut, 1414 AH – 1999 AD.

2. Second Condition: Legal Capacity (Ahliyyah):

Regarding this condition, it is stated: “Reconciliation is not valid except from one who has the legal capacity to dispose (of rights), and it is not valid from one who is not authorized to act, such as a minor, an insane person, and the like. (1)”

3. Third Condition: Valid Form of Reconciliation:

Jurists have discussed the form of reconciliation and mentioned some of its conditions and rulings, while others did not elaborate on it, considering what they mentioned under the chapters of sale, lease, gift, and discharge. They stated that reconciliation requires offer and acceptance, and that the wording used for offer and acceptance should be in the past tense. (2)

4. Fourth Condition: Valid Subject Matter of Reconciliation:

They stated regarding this condition: “Reconciliation is valid for anything for which compensation may lawfully be taken. (3)”

(1) *Daqa’iq Uli al-Nuha li Sharh al-Muntaha al-Ma’ruf bi Sharh Muntaha al-Iradat*, by Mansur ibn Yunus al-Buhuti al-Hanbali, vol. 3, p. 139, Alam al-Kutub, 1st edition, 1414 AH – 1993 AD.

(2) *Encyclopedia of Kuwaiti Jurisprudence*, previous reference, vol. 27, p. 247.

(3) *Al-Iqna’ fi Hall Alfaz Abi Shuja’*, by Imam Shams al-Din Abu al-Hasan Ahmad ibn al-Husayn al-Hijawi al-Maqdisi, vol. 2, p. 197, edited by: Abdul Latif al-Sabki, Dar al-Ma’rifah, Beirut, Lebanon.

5. Fifth Condition: Compliance of Reconciliation with Islamic Sharia:

The legal basis for this condition is what is stated in the hadith:
“Reconciliation is permissible among Muslims except for a reconciliation that makes lawful what is unlawful or makes unlawful what is lawful. (1)”

6. Sixth Condition: The Subject of Reconciliation Must Not Relate to the Rights of Allah (Public Rights):

Jurists stated regarding this condition: reconciliation must not involve matters related to the rights of Allah, as there is no room for reconciliation in such matters—such as prescribed punishments (hudud), endowments, expiations, and similar issues(2).

7. Seventh Condition: The Parties to the Dispute Must Have the Right to Reconcile:

Regarding this condition, it is stated: “Reconciliation is not valid except from one who has the legal capacity to dispose (of rights), and it is not valid from one who is not authorized to act, such as a minor, an insane person, and the like. (3) (4)”

Second Topic: Cases of Termination of Reconciliation:

Reconciliation ends in one of the following cases:

1. If the parties to the reconciliation reach a settlement resolving the dispute.

(1) Narrated by Abu Dawood in his Sunan, vol. 3, p. 446, previously cited.

(2) *Al-Mughni*, by Muwaffaq al-Din Abu Muhammad Abdullah ibn Ahmad ibn Qudamah, vol. 4, p. 9, edited by: Muhammad Abd al-Salam Abd al-Shafi, Dar al-Kutub al-‘Ilmiyyah, Beirut, 1st edition, 1411 AH – 1991 AD.

(3) *Sharh Muntaha al-Iradat*, previously cited, vol. 3, p. 139.

(4) See: *Arkan al-Sulh wa Shurutuhu* (Elements and Conditions of Reconciliation), by Dr. Faisal al-‘Asimi, under the topic: “Reconciliation in the Judiciary,” previous reference, pp. 33–56.

2. If one of the parties to the reconciliation is absent, in accordance with what was stated in the third topic mentioned earlier.
 3. If one of the parties withdraws from the reconciliation at any stage of its procedures.
 4. If reconciliation becomes impossible due to the death of one of the parties, the dissolution of a legal entity, or similar circumstances.
 5. If the number of reconciliation sessions exceeds the prescribed limit, or the duration exceeds the period specified in the fifth topic mentioned earlier.
 6. If the conciliator determines that there is no benefit in continuing the reconciliation procedures, or if the parties repeatedly violate the etiquette of reconciliation, and after taking appropriate measures such as warning and reporting the matter to the Director of the Reconciliation Office to decide on terminating the reconciliation or referring it to another conciliator (1).
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(1) Article (18): Termination of Reconciliation:

Reconciliation shall terminate in any of the following cases:

1. If the parties to the reconciliation reach a settlement resolving the dispute.
2. If one of the parties to the reconciliation is absent, in accordance with what is stated in Article (14).
3. If one of the parties withdraws from the reconciliation at any stage of its procedures.
4. If reconciliation becomes impossible due to the death of one of the parties, the dissolution of a legal entity, or similar circumstances.
5. If the number of reconciliation sessions exceeds the prescribed limit, or the duration exceeds the period specified in Article (16).

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6. If the conciliator determines that there is no benefit in continuing the reconciliation procedures, or if the parties repeatedly violate the etiquette of reconciliation, after taking appropriate measures such as warning, and the matter is referred to the Director of the Reconciliation Office to decide on terminating the reconciliation or referring it to another conciliator.

The condition of mediation is not considered fulfilled by merely following mediation procedures before the Saudi Center for Commercial Arbitration, as it has its own independent procedures. Rather, mediation before the Saudi Center for Commercial Arbitration involves submitting a request through the website, email, or other designated channels. The applicant must provide all relevant information about the dispute, including the names and addresses of the parties, details of the dispute, and any agreed mediation arrangements.

After registering the request, the parties attend mediation sessions in person or through their representatives with proper authorization. The administrative officer facilitates the process of appointing a mediator, either by agreement between the parties or through selection from the center's list of mediators. If the parties cannot agree, the administrative officer appoints a mediator based on criteria such as expertise, neutrality, and suitability for the dispute.

The mediator must adhere to professional ethics, particularly neutrality, confidentiality, and disclosure of any potential conflicts of interest. If a conflict arises, the mediator must withdraw, and another mediator shall be appointed.

Finally, the mediator organizes preliminary meetings with the parties to explain the mediation process and agree on procedural arrangements, including the scheduling of sessions and the methods of communication.

7. The mediator shall agree with each party on a suitable time and method of communication.
8. The mediator shall facilitate the exchange of documents and information between the parties, unless one of the parties requests that certain information be disclosed only to the mediator.
9. The mediator shall not impose any specific settlement on the parties; rather, the continuation of mediation depends on their mutual agreement.
10. The mediator may meet each party separately to explore possible solutions to the dispute.
11. The mediator must remain neutral and treat all parties equally, without favoring any party.
12. The mediator must respect the authority of legal representation and ensure proper authorization where applicable.
13. The mediator shall ensure the confidentiality of the mediation sessions and all related documents and information.
14. No records or recordings of mediation sessions shall be made unless all parties agree otherwise.
15. The mediator shall ensure that all participants sign a confidentiality undertaking before engaging in the mediation process.
16. The mediator shall ensure that all exchanged documents are returned or destroyed at the conclusion of mediation, unless otherwise agreed by the parties.
17. The mediator shall prepare a written report outlining the outcome of the mediation, whether successful or not, based on the agreement of the parties.
18. The mediator shall conclude the mediation in any of the following cases:
 - If the parties reach a settlement agreement.
 - If the mediator determines that further efforts will not lead to a resolution.
 - If one of the parties withdraws from the mediation process.

These procedures stipulated in the Rules of the Reconciliation Center, in my view, do not go beyond what has been detailed earlier in the second branch of the third topic of the preliminary section, in terms of being part of Sharia policy and rooted in the juristic principle of public interest (al-masalih al-mursalah).

Among the judicial rulings and practical applications that established the requirement to complete mediation procedures is the judgment issued by the Court of Appeal in the Eastern Region, which stated in its operative part: “The request is not accepted due to the failure to attach proof of resorting to an amicable solution.”

May Allah grant success, and peace and blessings be upon our Prophet Muhammad and his family and companions.

The judicial panel based its ruling on the following reasons:

“Since the dispute is an arbitration dispute, jurisdiction is established for this court based on Article (8) of the Arbitration Law issued by Royal Decree No. (M/34)...”

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4. The administrative officer shall notify the parties in writing that one of them must pay the due amounts within a period of no less than seven (7) days from the due date.
 5. If no communication occurs between the mediator and either party within fourteen (14) days after the conclusion of the mediation meeting, the process shall be deemed terminated.
 6. The administrative officer, the Center’s Board, and the mediator appointed in accordance with the Center’s mediation rules shall not be considered parties to any judicial dispute related to the mediation, and they shall bear no responsibility toward any party for any error, act, or omission in mediation, except as provided by the applicable law or the Center’s rules.
 7. The mediator shall interpret and apply the Center’s rules within the limits agreed upon by the parties and in accordance with the authority granted by the administrative officer, taking into account what has been previously stated.
 8. Fees and costs of mediation shall be paid according to the mechanism specified in the Center’s rules and its annex, and the costs of mediation shall be borne by the parties to the dispute as agreed between them.
 9. The language of mediation shall be the language of the mediation agreement itself, unless the parties agree otherwise.

Dated 24/05/1433 AH, and since the plaintiff's representative requested the appointment of an arbitrator against the defendant, and since Article (8) of the Commercial Courts Law refers to the Implementing Regulations of the Law for determining the cases in which resorting to reconciliation and mediation is required before filing a lawsuit. The Regulations have specified such cases in Article (85), including paragraph (d) of that article, which states:

“Cases related to contracts that include a written agreement requiring resorting to reconciliation, mediation, or amicable settlement before resorting to the judiciary; accordingly, reconciliation and mediation must be pursued before filing the lawsuit, and the lawsuit shall not be registered unless proof of such recourse is provided.”

This requires the submission of evidence or documents proving that reconciliation or mediation was pursued, especially in cases where arbitration is stipulated as a condition. According to Article (59), paragraph (1) of the Regulations:

“It shall be verified that reconciliation procedures have been undertaken by submitting a document indicating that reconciliation has concluded—whether through settlement or otherwise in part of the dispute—or by submitting proof of the commencement of reconciliation procedures and the lapse of the period specified in paragraph (1) of Article (8) of the Law.”

Since the arbitration clause included a requirement to resort to amicable settlement, and the plaintiff's representative did not submit proof of such recourse, the panel concluded its decision as stated in its operative part. (1)

(1) Text of the Appeal:

Court of Appeal:

City: Eastern Province

Decision Number: 1362

Date: 10 / 07 / 1442 AH

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In the name of Allah, and peace and blessings be upon the Messenger of Allah. Thereafter:

The Fifth Appellate Circuit, based on Case No. (1363) for the year 1442 AH, filed by (...) Contracting Company, Commercial Registration No. (...), against (...) Company, Commercial Registration No. (...), convened with the following panel:

Judge (.....) Presiding Judge, Judge (.....) Member, Judge (.....) Member.

Facts:

The facts of this case are summarized as follows:

The plaintiff's representative, under Power of Attorney No. (...) dated 08/05/1442 AH, issued through the electronic power of attorney services, submitted a lawsuit requesting the appointment of an arbitrator on behalf of the defendant to resolve the dispute between the parties. The dispute arose from a partnership contract concluded between them concerning the operation and maintenance of a hotel owned by the plaintiff. The plaintiff stated that the defendant failed to complete the works and did not fulfill its contractual obligations. The plaintiff attempted to terminate the contract, but the defendant refused.

Accordingly, the plaintiff obtained a judicial ruling dated 16/03/1442 AH appointing an arbitrator. However, the defendant objected to the appointment and requested the court to appoint a different arbitrator based on the arbitration clause included in the contract, which states:

“In the event of any dispute arising regarding the execution, interpretation, or implementation of this contract, it shall be resolved amicably. If no amicable resolution is reached within fifteen (15) days from the date of notification, the dispute shall be referred to arbitration under the rules of the Saudi Center for Commercial Arbitration in Riyadh.”

The plaintiff then filed the case before the appellate circuit, requesting the appointment of an arbitrator against the defendant. The case was registered with the Commercial Court, and a hearing was scheduled on 10/07/1442 AH, during which the court issued its judgment based on the following reasons:

Reasons:

Since the dispute is an arbitration dispute, jurisdiction is established for this court based on Article (8) of the Arbitration Law issued by Royal Decree No. (M/34) dated 24/05/1433 AH. Furthermore, Article (8) of the Commercial Courts Law refers to the Implementing Regulations to determine the procedural requirements for such disputes.

Third Section

Submitting Proof of Completion of Mediation Procedures

Introduction and Structure:

The requirement to resort to mediation before filing a lawsuit before the judiciary in the disputes and cases mentioned in the preliminary section necessitates submitting proof before the court that mediation procedures have been completed. This is in accordance with the Implementing Regulations of the Commercial Courts Law, which established the evidentiary requirements through which the court verifies the completion of mediation procedures. This proof is: a document...

= In cases where resorting to reconciliation and mediation is required before filing a lawsuit, as specified in the Implementing Regulations of the Commercial Courts Law—particularly paragraph (d) of Article (85), which provides that:

“Cases related to contracts that include a written agreement requiring resorting to reconciliation, mediation, or amicable settlement before resorting to the judiciary; accordingly, reconciliation and mediation must be pursued before filing the lawsuit.”

Therefore, the lawsuit shall not be registered unless proof of such recourse is provided. This requires submitting documents or evidence demonstrating that reconciliation or mediation procedures have been undertaken, especially in cases where arbitration is stipulated as a condition.

According to Article (59), paragraph (1) of the Regulations, verification of resorting to reconciliation is established by submitting a document indicating the conclusion of reconciliation—whether through settlement or otherwise in part of the dispute—or by submitting proof of the commencement of reconciliation procedures and the lapse of the period specified in paragraph (1) of Article (8) of the Law.

Since the arbitration clause included a requirement to resort to amicable settlement, and the plaintiff’s representative did not provide proof of such recourse, the panel concludes its decision as stated below.

Operative Part of the Judgment:

The request is not accepted due to the failure to attach proof of resorting to an amicable solution.

May Allah grant success, and peace and blessings be upon our Prophet Muhammad and his family and companions.

Member (.....) Member (.....) Presiding Judge (.....)

Termination of reconciliation without settlement, or with settlement in part of the dispute, or submission of proof of commencement of reconciliation procedures, provided that the duration of such procedures does not exceed thirty (30) days from the date of commencement, unless the parties agree on a longer period. (1)

To achieve this regulatory effect—according to the Rules of the Reconciliation Center—the mediator must complete the following requirements:

First Requirement: Preparation of Minutes and Reports:

It is necessary to submit a document evidencing the conclusion of reconciliation—whether with or without settlement—before the court.

(1) According to the Rules of the Reconciliation Center, this stage must be preceded by the preparation of the following:

1. If reconciliation ends without settlement, the conciliator shall prepare a report including the basic information in accordance with the approved form, such as: the date of the reconciliation sessions, the place where they were held, the name of the conciliator, the names of the parties to the reconciliation, their basic details, and the names of those who attended the session, along with a summary of the dispute, without mentioning the details of what occurred during the session.

2. (1) Article (59) of the Implementing Regulations of the Commercial Courts Law states:
3. “Verification of prior resort to reconciliation shall be established by submitting a document evidencing the conclusion of reconciliation—whether with or without settlement in part of the dispute—or by submitting proof of the commencement of reconciliation procedures and the lapse of the period specified in paragraph (1) of Article (8) of the Law. Accordingly, the lawsuit shall not be registered without completing reconciliation and mediation procedures, and the provisions of Articles (21) and (22) of the Law shall apply in the event of failure to submit what is required under paragraph (1) of this Article.”

2. If reconciliation ends with a settlement in part of the dispute, the conciliator shall prepare a report indicating that reconciliation has concluded with a partial settlement, in accordance with what was stated in the previous paragraph. A reconciliation record shall also be prepared documenting what has been agreed upon, specifying the part of the dispute that has been settled. The provisions and procedures related to the reconciliation record shall be governed by the rules set out in Chapter Five of the Rules of the Reconciliation Center.
 3. If reconciliation ends with a full settlement, the conciliator shall prepare a reconciliation record in accordance with the provisions of Chapter Five of the Rules of the Reconciliation Center. (1)
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(1) Article (19): Preparation of Minutes:

The conciliator shall prepare minutes of the reconciliation sessions as follows:

1. If reconciliation ends without settlement, the conciliator shall prepare a report in accordance with the approved form, including the basic information such as: the dates of the reconciliation sessions, the place where they were held, the name of the conciliator, the names of the parties to the reconciliation and their basic details, the names of those who attended the session, and a summary of the dispute, without mentioning what took place during the session. The transaction shall be archived, and the competent court shall be notified if the case is pending.
2. If reconciliation ends with a settlement in part of the dispute, the conciliator shall prepare a report indicating that reconciliation has concluded without a full settlement, in accordance with what is stated in the previous paragraph. A reconciliation record shall also be prepared documenting what has been agreed upon, specifying the part of the dispute that has been settled. The provisions and procedures related to the reconciliation record shall be governed by the rules set out in Chapter Five, and the transaction shall be archived with notification to the competent court if the case is pending.
3. If reconciliation ends with a full settlement, the conciliator shall prepare a reconciliation record in accordance with the provisions of Chapter Five, and the competent court shall be notified if the case is pending

Second Requirement: Mediator's Obligations:

According to the Rules of the Reconciliation Center, the conciliator is bound by a set of obligations related to the dispute and those arising from their relationship with the Reconciliation Center. The most important of these is the conciliator's commitment to duties that directly affect the resolution of the dispute and the outcome reached—whether a settlement is achieved or not. These obligations are as follows:

1. The conciliator must conduct their work with confidentiality, impartiality, professionalism, integrity, and diligence, in accordance with the applicable code of conduct and ethical standards.
2. The conciliator must adhere to neutrality and independence. Accordingly, the conciliator may not undertake reconciliation in circumstances that may affect their neutrality or independence, unless full disclosure is made to the Center's administration and all parties to the reconciliation, and their written consent is obtained. Such circumstances include:
 1. If the conciliator is the spouse, a relative, or an in-law of either party up to the fourth degree, or has an existing or potential interest in the dispute, including any professional relationship or partnership with one of the parties, whether such relationship or partnership is current or has terminated, or has a personal or financial interest in the outcome of the conciliation, or any other circumstance that may affect the conciliator's independence and impartiality.

2. If the conciliator has previously represented, pleaded on behalf of, or acted for one of the parties in the dispute, or has previously examined the matter as an expert or arbitrator, or provided testimony in it, or participated in any investigation procedures related to it. (1)

Third Requirement: Fulfillment of the Conditions for the Reconciliation Document, Approval, and Receipt:

In principle, the document evidencing the conclusion of reconciliation must be accepted before the judiciary, in accordance with the Rules of the Reconciliation Center. To ensure that the reconciliation document fulfills its conditions and is duly approved, the following requirements must be met:

(1) Article (30): Evaluation of the Conciliator:

The conciliator must conduct their work in accordance with the principles of confidentiality, impartiality, professionalism, diligence, and integrity, as well as any applicable codes of conduct.

(2) Impartiality of the Conciliator:

The conciliator may not undertake reconciliation in circumstances that may affect their impartiality or independence, except after disclosure to the Center’s administration and all parties to the reconciliation, and obtaining their written consent. Such circumstances include:

- a. If the conciliator is a spouse, relative, or in-law of any party up to the fourth degree, or has an existing or potential interest in the dispute, or has a professional relationship or partnership with any of the parties—whether current or past—or any personal or financial interest in the outcome of the reconciliation, or any other circumstance that may affect their impartiality or independence.
- b. If the conciliator has previously represented, pleaded on behalf of, or acted for one of the parties in the dispute, or has examined the matter as an expert or arbitrator, or provided testimony in it, or participated in any investigation procedures related to it.

First Element: Conditions of the Reconciliation Document:

The conciliator must prepare a document clearly setting out all matters agreed upon by the parties to the reconciliation, including the terms and provisions that resolve the dispute. The following must be observed:

1. The terms of the settlement and the obligations of the parties must be clear and enforceable, and must not contradict the provisions of Islamic Sharia or applicable regulations.
 2. The reconciliation document must be prepared in accordance with the approved templates, if available, and must include the following information:
 1. Date of the settlement.
 2. Name of the conciliator.
 3. Names of the parties to the reconciliation and their basic details, including the identity number for individuals, commercial registration for legal entities, and power of attorney details for representatives.
 4. A summary of the dispute and the parties' claims.
 5. The settlement agreed upon by the parties, including all its terms, details, and the method of execution.
-

6. The reconciliation document must be signed by the conciliator and the parties to the dispute, or their authorized representatives empowered to accept the settlement. This includes electronic signatures in officially recorded minutes, in accordance with the applicable regulations. (1)

Second Element: Procedures for Approval of the Reconciliation Document:

The reconciliation document must be approved by the competent authority (the legally authorized official).

The procedures for approving the reconciliation document are as follows:

(1) Article (20): Form of the Reconciliation Document and Its Conditions:

The conciliator shall prepare a document clearly setting out all matters agreed upon by the parties to the reconciliation, including the terms and provisions that resolve the dispute, subject to the following conditions:

1. The terms of the settlement and the obligations of the parties must be clear and enforceable, and must not contradict the provisions of Islamic Sharia or applicable regulations.
2. The reconciliation document must be prepared in accordance with the approved templates, if available, and must include the following information:
 1. Date of the settlement.
 2. Name of the conciliator.
 3. Names of the parties to the reconciliation and their basic details, including the identity number for individuals and the commercial registration for legal entities, as well as the details of powers of attorney for representatives.
 4. A summary of the dispute and the parties' claims.
 5. The settlement agreed upon by the parties, including all its terms, details, and the method of execution.
3. The reconciliation document must be signed by the conciliator and the parties to the dispute, or their authorized representatives empowered to accept the settlement. This includes electronic signatures recorded in official minutes, in accordance with the applicable regulations.

1. The reconciliation document shall be approved—after being signed by the conciliator and the parties—by the Director of the Reconciliation Office in which the reconciliation took place, or by the Secretary-General, or by whomever he authorizes for documents issued by registered conciliators and electronic reconciliation documents.
2. While maintaining the confidentiality of reconciliation sessions, the Center’s Secretary-General may assign an administrative unit to review the quality of reconciliation documents before their approval.
3. The parties to the reconciliation are bound by signing the reconciliation document, and once approved, it becomes an enforceable instrument subject to the provisions of enforcement under the Enforcement Law.

After completing these procedures, no party to the reconciliation may withdraw from or invalidate the reconciliation document except with the consent of all parties or pursuant to a Sharia or legal ruling. (1)

(1) Article (21): Procedures for Approval of the Reconciliation Document and Its Validity:

1. The reconciliation document shall be approved—after being signed by the conciliator and the parties—by the Director of the Reconciliation Office in which the reconciliation took place, or by the Secretary-General, or by whomever he authorizes, for documents issued by registered conciliators and electronic reconciliation documents.
2. While maintaining the confidentiality of reconciliation sessions, the Secretary-General of the Center may assign an administrative unit within the Center to review and assess the quality of reconciliation documents before their approval.
3. The reconciliation document is binding upon the parties once signed, and after its approval, it becomes an enforceable instrument subject to the provisions governing enforcement under the Enforcement Law.
4. No party to the reconciliation may rescind, revoke, or withdraw from the reconciliation document except with the consent of all parties or pursuant to a Sharia or legal ruling.

Third Element: Delivery of the Reconciliation Document:

After completing the previous procedures, each party shall be provided with a copy of the reconciliation document after its approval. The Reconciliation Offices and registered conciliators shall also send an electronic copy of the reconciliation documents to the Center, where they are stored electronically in a manner that preserves their confidentiality and facilitates access when needed. (1)

Upon completion of this step, the reconciliation document becomes—according to the Rules of the Reconciliation Center—sufficient proof of fulfilling the requirement to resort to mediation.

These procedures stipulated in the Rules of the Reconciliation Center, in my view, do not go beyond what has been detailed earlier in the second branch of the third topic of the preliminary section, as they are considered part of Sharia policy and rooted in the juristic principle of public interest (al-masalih al-mursalah).

Among the judicial rulings and practical applications that established the requirement to submit proof of completion of mediation procedures before filing a lawsuit is the judgment issued by the Court of Appeal in the Eastern Region, which stated in its operative part:

“The panel ruled that this lawsuit is not admissible.”

May Allah grant success, and peace and blessings be upon our Prophet Muhammad and his family and companions.

(1) Article (22): Retention, Delivery, and Copies of the Reconciliation Document:

Each party shall be provided with a copy of the reconciliation document after its approval. The Reconciliation Offices and registered conciliators shall send an electronic copy of the reconciliation documents to the Center, where they are stored electronically in a manner that preserves their confidentiality and facilitates access when needed.

Reasons:

“As this dispute arises from a contracting agreement, jurisdiction to hear this case is vested in the Commercial Courts in accordance with Article (16) of the Commercial Courts Law issued by Royal Decree No. (M/93) dated 15/08/1441 AH.

Furthermore, since the dispute is related to the application of the Saudi Arbitration Law, jurisdiction is also established for the Commercial Court of Appeal based on Article (8) of the Arbitration Law issued by Royal Decree No. (M/34) dated 24/05/1433 AH.

Given that the plaintiff has requested the appointment of an arbitrator against the defendant based on the arbitration clause contained in the contract, and since that clause requires the parties to first resort to amicable settlement before proceeding to arbitration, and considering that Article (8) of the Commercial Courts Law refers to the Implementing Regulations to determine the cases in which reconciliation and mediation must be pursued before filing a lawsuit—

and since the Implementing Regulations of the Commercial Courts Law have specified in Article (85) that reconciliation and mediation must be pursued before filing certain types of cases, including those related to contracts that contain a written agreement requiring resorting to reconciliation, mediation, or amicable settlement before resorting to the judiciary—

and since the plaintiff has not provided proof of having resorted to reconciliation before filing the lawsuit, the claim is deemed procedurally deficient and therefore inadmissible.”

Based on paragraph (h) of Article (9) of the Implementing Regulations of the Arbitration Law, the panel concludes that the lawsuit is not admissible. (1)

(1) Text of the Appeal:

In the name of Allah, and peace and blessings be upon the Messenger of Allah. Thereafter:

The Commercial Court in Riyadh, based on Case No. (443019733) for the year 1444 AH, considered the following:

Facts:

The facts of this case, as required for issuing the judgment, are summarized as follows:

The plaintiff filed a statement of claim stating that a contract was concluded between the plaintiff and the defendant for contracting works (void contract), and based on the arbitration agreement set out in Clause (15) of the contract dated 27/08/1440 AH, which provides that:

“All disputes arising from this agreement shall be resolved in accordance with the laws of the Kingdom of Saudi Arabia, and if no agreement is reached between the parties, the dispute shall be referred to arbitration under the Saudi Center for Commercial Arbitration.”

The plaintiff stated that the defendant refrained from appointing an arbitrator, and therefore requested the court to appoint an arbitrator on its behalf to resolve the dispute between them.

On 23/03/1444 AH, the plaintiff’s representative attended, and the defendant’s representative also appeared. The defendant’s counsel requested dismissal of the claim on formal grounds, after reviewing the case file and noting that the arbitration clause requires resorting to amicable settlement before arbitration. The defendant argued that the plaintiff’s request for the appointment of an arbitrator includes a request for compensation and reconciliation, which requires prior recourse to mediation.

The case was reserved for judgment.

Reasons:

Since this dispute arises from a contracting agreement, jurisdiction to hear the case is vested in the Commercial Courts in accordance with Article (16) of the Commercial Courts Law issued by Royal Decree No. (M/93) dated 15/08/1441 AH.

And since the dispute is also related to the application of the Arbitration Law, jurisdiction is further established for the Commercial Court based on Article (8) of the Arbitration Law issued by Royal Decree No. (M/34) dated 24/05/1433 AH.

And since the plaintiff has requested the appointment of an arbitrator based on the arbitration clause in the contract, and that clause requires resorting to amicable settlement before arbitration, and since the Implementing Regulations of the Commercial Courts Law specify that certain cases must undergo reconciliation and mediation before filing, the court examines compliance with such requirement accordingly.

...against the defendant, based on the arbitration clause previously mentioned, and since the arbitration clause agreed upon by the parties requires resorting to amicable settlement before proceeding to arbitration, and since Article (8) of the Commercial Courts Law refers to the Implementing Regulations to determine the cases in which reconciliation and mediation must be pursued before filing a lawsuit—

and since the Implementing Regulations of the Commercial Courts Law, specifically Article (85), stipulate:

“Reconciliation and mediation must be pursued before filing the following types of cases:

— Cases related to contracts that include a written agreement requiring resorting to reconciliation, mediation, or amicable settlement before resorting to the judiciary.”

And since the plaintiff did not prove that they had resorted to reconciliation before filing the lawsuit, and in accordance with paragraph (h) of Article (9) of the Implementing Regulations of the Arbitration Law, the panel concludes that the claim is not admissible.

Operative Part of the Judgment:

The panel ruled that this lawsuit is not admissible.

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Conclusion:

I conclude by praising Allah, Glorified and Exalted, for facilitating and enabling this work, and I ask Him for guidance. I then present to the honorable reader the most prominent findings reached in this study, as follows:

1. It appears that the legal drafting of the regulatory provisions in the Commercial Courts Law and its Implementing Regulations—which define the types of cases in which mediation must be pursued—has a significant impact on facilitating the understanding of the cases that require recourse to mediation.
2. It is evident that a judgment of inadmissibility of a claim due to failure to resort to mediation does not prevent the same claim from being filed again before the courts; however, it requires compliance with the necessary procedures before re-filing.
3. It is also evident that mediation is receiving increasing regulatory attention in terms of its rules and procedures; however, mediators still require greater focus on qualification and training.

Key Recommendations:

1. Regulatory provisions addressing a single issue should be consolidated within one article in the Implementing Regulations, rather than being scattered across multiple provisions.
2. The Ministry of Justice should publish research studies—especially those that contribute to explaining and consolidating the regulatory provisions—in a way that serves the interests of dispute parties.
3. Specialized committees responsible for drafting regulations should review formulations that rely on multiple cross-references, as this may sometimes lead to ambiguity in application.

This issue requires a ministerial decision to clarify or amend it, and we have provided examples of this in our study.

And peace and blessings be upon our Prophet Muhammad and his family and companions.

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