



A University of Sussex PhD thesis

Available online via Sussex Research Online:

<http://sro.sussex.ac.uk/>

This thesis is protected by copyright which belongs to the author.

This thesis cannot be reproduced or quoted extensively from without first obtaining permission in writing from the Author

The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the Author

When referring to this work, full bibliographic details including the author, title, awarding institution and date of the thesis must be given

Please visit Sussex Research Online for more information and further details

Resolving Insurance Disputes in the Kingdom of Saudi Arabia: A Critical Assessment of the Insurance Dispute Committee

By

Abdulhamid H. Almutairi

A Thesis Submitted for the Degree of Doctor of Philosophy in Law

School of Law, University of Sussex

November 2019

Affirmation

This thesis, submitted for the Degree of Doctor of Philosophy, is an original work of my own and has not been submitted before for any other degree.

Abstract

In many countries, when policyholders or consumers are denied coverage by insurers in an arbitrary manner, it may be difficult for the policyholders to successfully challenge the adverse coverage determinations. They may challenge insurers in court (litigation) or via means outside of the courtroom (alternative dispute resolution options: arbitration, negotiation, mediation). In the Kingdom of Saudi Arabia (KSA), the Cooperative Insurance Companies Control Law (CICCL) and its Implementing Regulations provide for the creation of an administrative tribunal called the Insurance Dispute Committee (IDC). All insurance disputes must be submitted to this tribunal. This study seeks to determine whether this is the best option for consumers in the KSA. In order to achieve this aim, the IDC is analysed at three levels: doctrinal, practical, and empirical.

The doctrinal analysis reveals that the provisions of the CICCL regarding panel decision-making are ambiguous. Also, the discretion enjoyed by IDC adjudicators is too broad, and in practice, they seldom appeal to *Shariah* principles or provisions of the legislation. The system is therefore unpredictable, given that cases are decided on an ad hoc basis.

The practical inquiry provides different findings to the doctrinal analysis. The practical inquiry affirms the position that the IDC prioritises the interests of the parties and yields a very high level of satisfaction with outcomes. The disconnect between the results of the doctrinal analysis and the findings of the practical inquiry is explained by capturing the perceptions of a sample of IDC adjudicators. The empirical study reveals that IDC adjudicators have a unique conception of what constitutes a well-reasoned decision. However, the explanations in their decisions satisfy Saudi parties, specifically consumers. Thus, unlike the doctrinal analysis, the findings of the practical and empirical inquiries provide support to the Saudi legislator's decision to compel parties to submit disputes to the IDC.

Acknowledgment

The journey of completing this thesis has been a long and challenging, but productive one. Moreover, it is one that I have not been obliged to make alone. First and foremost, all praise and thanks be to Allah, the Almighty God, who has given me the capability, power and determination to pursue my passion.

In particular, I would like to take this opportunity to express my gratitude to my mother for her prayers and love, which have sustained my morale and provided me with constant support.

Additionally, I owe a special debt of gratitude and appreciation to my supervisors, Dr. Ahmad Ghouri, Professor Erika Szyszczak, and Dr. Joanna Wilson. Words are inadequate to express how thankful I am for their continuous support and dedication; providing me with their indispensable ideas, supervision and advice throughout this PhD journey. I also wish to extend my gratitude to all those who helped me secure the participation of IDC panel members, as well as those who advised me on addressing the ethical issues surrounding this study. Moreover, I would like to thank the IDC panel members themselves, who took time out of their very busy schedules to complete and return the questionnaires.

Lastly, sincere thanks are owed to my family, including my brothers and sisters for their encouragement. Most of all, I am grateful to my loving wife, Reem, and our children, Reema, Abdulkarim, Fatimah and Aminah, who have waited so patiently and been so supportive throughout the completion of this project.

Glossary

Akhaam al-Wad: Positive human-made rules.

Al-Dayyah: A substitute penalty.

Aqilah: A pool of risk and common resources.

Dharurah: Necessity that may justify certain acts.

Dhimmiyin: Protected non-Muslim subjects.

Fatwa: Rulings on matters that did not exist in the Prophet's day.

Fiqh: Secondary sources that interpret the divine law.

Gharar: Risk, speculation, and uncertainty.

Hajah: A pilgrim.

Hanbali: One of the four schools of Sunni Islamic jurisprudence, named after its founder, ibn Hanbal. It is recognised as the official school of law in the Kingdom of Saudi Arabia.

Hanafi: One of the four schools of Sunni Islamic jurisprudence, named after its founder, Abu Hanifa.

Hudna: Truce, armistice or cease-fire.

Hudud: Punishment for a crime under Islamic law.

Ijma: Consensus interpretations from the earliest generation of Islamic scholars

Kadi: Arbitrator or mediator.

Maliki: One of the four schools of Sunni Islamic jurisprudence, named after its founder, Malik ibn Anas.

Maysir: Gambling or immoral inducement.

Mudaraba: A partnership where one partner provides the funds and the other partner manages the funds

Nizam: Regulation or legislative act.

Qiyas: The reasoning of Muslim judges when applying the law

Qanun: Body of rules that regulated behaviour.

Riba: Interest or unjust gains made in trade.

Shafi'i: One of the four schools of Sunni Islamic jurisprudence, named after its founder, Al-Shafi'i, a pupil of Malik.

Shariah: Canonical law based on the traditions of the Holy Prophet and the teachings of the Holy Quran.

Sulh: Resolution or fixing according to religious principles.

Sunnah: The body of the traditional legal and social customs of the Islamic community.

Surah: A chapter of the Quran.

Ta'awun: Mutuality or cooperative insurance.

Tabarru: Donation or gifts.

Tadawul: The Saudi stock exchange.

Takaful: A cooperative system of repayment in case of loss.

Wakala: An agency agreement where the account holder designates an agent to carry out a specific task on his behalf.

List of Abbreviations

ADR - alternative dispute resolution

CICCL - Cooperative Insurance Companies Control Law

DIFC - Dubai International Financial Centre

IAT - Insurance Appellate Tribunals

ICC - International Chamber of Commerce

ICMIF - International Cooperative and Mutual Insurance Federation

IDC - Insurance Dispute Committee

KSA – Kingdom of Saudi Arabia

SAMA - Saudi Arabian Monetary Authority

SCCA - Saudi Centre for Commercial Arbitration

UAE - United Arab Emirates

UNCITRAL – United Nations Commission on International Trade Law

Table of Statutes

The Income Tax Law, Royal Decree No. 17/2/28/322 (21/1/1370H, Nov. 1, 1950)

The Traffic Law, Royal Decree No. M/49 (6/11/1391H, Dec. 23, 1971)

The Mining Law, Royal Decree No. M/21 (20/5/1392H, Jul. 1, 1972)

Law of the Judiciary issued by Royal Decree No. M/64 (12/07/1975) establishing the independence of Shariah courts

Service Agency Regulation issued by Royal Decree M/2 of December 31, 1977

The Council of Minister Decree No. 11 (6/12/1400H, Oct 14, 1980)

Law of the Board of Grievances issued by Royal Decree No. M/51 (10/05/1982) establishing the Board of Grievances

The Prime Minister Decision No. 8/729 (10/7/1407H, Mar. 9, 1987)

The Copyright Law, Royal Decree No. 1 (19/5/1410H, Dec. 18, 1989)

Basic Law of Governance, Royal Order No. A/90, (27/8/1412H, Mar. 1, 1992)

The Regional Law, Royal Order No. A/91 (27/8/1412H, Mar. 1, 1992)

The Shura Council Law, Royal Order No. A/91, (27/8/1412H, Mar. 1, 1992)

The Cooperative Health Insurance Law No. 71 of 11 August 1999

Law of Procedure of Shariah Courts issued by Royal Decree No. M/21 of 20 Jumada I, 1421 (19 August 2000)

Cooperative Insurance Companies Control Law, Royal Decree No M/32, July 2003, (2 Jumada II 1424)

Circular No. 3/13/1399 H of October 10, 1979

The Law on Supervision of Co-operative Insurance Companies promulgated by Royal Decree M/5 dated 17/5/1405 H

Ministerial Decree No. 222 of 25/07/1429 H setting up the Insurance Dispute and Violation Resolution Committee that was set up by

Law of the Judiciary issued by Royal Decree No. M/78 (1/10/2007)

Enforcement Law issued by Royal Decree No. M/53 of 13 Sha'ban 1433 Hejra (3 July 2012)

The Arbitration Law issued by Royal Decree No. M/34 of 9 July 2012

Table of Contents

Affirmation	2
Abstract	3
Acknowledgment	4
Glossary	5
List of Abbreviations	7
Table of Statutes	8
Table of Contents	9
Chapter 1: Introduction	13
1.1 Background	13
1.1.1 Takaful	14
1.1.2 The Cooperative Insurance Structure in the KSA	16
1.2 Research Aim and Questions	20
1.3 Significance of the Contribution to Research	23
1.4 Methodology	24
1.5 Research Limitations	27
1.6 Thesis Structure	29
Chapter 2: The Legal and Regulatory Framework Governing Insurance in the Kingdom of Saudi Arabia (KSA)	32
2.1 Introduction	32
2.2 Saudi Arabia's Legal and Judicial System	32
2.2.1 The Saudi Legal System	34
2.2.2 The Judicial System	35
2.2.3 Sources of Law	39
2.3 The Development of Saudi Insurance Law	43
2.3.1 Basic Law of the Insurance Sector	44
2.3.2 Obligations of the Parties	46
2.4 Regulation of the Insurance Sector	51
2.4.1 The Authority Responsible for Regulating and Supervising Insurance Activities	52
2.4.2 Understanding the Insurance Claim Process	54
2.5 Dispute Resolution under the Cooperative Insurance Companies Control Law (CICCL)	59
2.5.1 Assessing the Quality of the IDC	61
2.5.2 Specific Challenges to Insurance Dispute Resolution	66
2.6 Conclusion	70
Chapter 3: Comparing the Litigation and Administrative Tribunal Models	73

3.1 Introduction.....	73
3.2 Insurance Dispute Resolution in the KSA	74
3.2.1 The Use of Litigation	74
3.2.2 The Use of Administrative Tribunals.....	77
3.2.2.1 The Concept of the ‘Administrative Tribunal’	79
3.2.2.2 The Nature of the Tribunal.....	81
3.2.2.3 The Use of Administrative Tribunals in Islamic Countries	83
3.2.2.4 Advantages and Shortcomings of the Administrative Tribunal Model.....	87
3.3 The Profile of the Archetypal Administrative Tribunal.....	91
3.3.1 Creation of the Tribunal	92
3.3.2 Composition of the Tribunal	93
3.3.3 Procedural Rules of the Tribunal	95
3.3.4 Decision-Making by the Tribunal	97
3.3.4.1 Evidence.....	97
3.3.4.2 Precedent.....	98
3.3.4.3 Decision Rationales.....	99
3.3.4.4 Appeals and Judicial Review	99
3.3.4.5 Enforceability of Tribunal Decisions	100
3.3.5 How the IDC Compares to the Archetypal Administrative Tribunal.....	100
3.3.5.1 Creation by the Saudi Arabia Monetary Authority (SAMA).....	101
3.3.5.2 Composition of the Committee	101
3.3.5.3 Procedural Rules of the IDC	103
3.3.5.4 Decision-Making by the IDC	104
3.4 Is the Administrative Model More Effective than Litigation?.....	107
3.4.1 Cost and Duration	109
3.4.2 Shariah-Compliance.....	110
3.4.3 Impartiality and Flexibility	111
3.4.4 Predictability	111
3.5 Conclusion	113
Chapter 4: Comparing the Administrative Tribunal Model and Other Forms of ADR.....	115
4.1 Introduction.....	115
4.2 The Shortcomings of the Administrative Tribunal Model.....	116
4.3 The Effectiveness for Other ADR Options	117
4.3.1 Negotiation.....	117
4.3.1.1 Cost and Duration	118
4.3.1.2 <i>Shariah</i> Compliance.....	119
4.3.1.3 Impartiality.....	119

4.3.1.4 Flexibility	120
4.3.1.5 Predictability	120
4.3.2 Mediation	121
4.3.2.1 Cost and Duration	121
4.3.2.2 <i>Shariah</i> Compliance.....	122
4.3.2.3 Impartiality.....	122
4.3.2.4 Flexibility	124
4.3.2.5 Predictability	124
4.3.3 Arbitration.....	125
4.3.3.1 The Old Regime	127
4.3.3.2 The New Regime	130
4.3.3.3. Insurance Dispute Resolution under the New Regime.....	130
4.3.3.4 The Choice of Arbitration	141
4.4 Conclusion	149
Chapter 5: Determining the Effectiveness of the IDC on the Basis of a Practical Inquiry....	152
5.1 Introduction.....	152
5.2 The Main Thrust of the Practical Inquiry	153
5.3 Statistics on the Use of the IDC	159
5.3.1 User Satisfaction	164
5.4 Why Are the Users Satisfied with the IDC?	167
5.4.1 Determining the Effectiveness of the IDC	169
5.4.1.1 Cost and Duration	169
5.4.1.2 <i>Shariah</i> Compliance.....	170
5.4.1.3 Impartiality.....	170
5.4.1.4 Flexibility	171
5.4.1.5 Predictability	172
5.4.2.1 The Relationship between Users' Satisfaction and the Fairness of Outcomes in Primary Committees	173
5.4.2.2 The Relationship between Users' Satisfaction and the Fairness of Outcomes in the SAMA Appeal Committee.....	178
5.4.3 Comparing the IDC to Litigation and Arbitration.....	181
5.4.4 Comparing the IDC to Mediation and Negotiation.....	184
5.5 The Disconnect between Legal Theory and Praxis.....	185
5.5 Conclusion	188
Chapter 6: A Qualitative Study of the Perceptions of IDC Adjudicators: Reconciling the Doctrine and Practice	191
6.1 Introduction.....	191

6.2 Study Design and Ethics	192
6.2.1 Ethical Issues	194
6.3 Sampling	195
6.4 Data Collection	198
6.4.1 The Use of the Questionnaire.....	199
6.5 Data Analysis	201
6.5.1 The Phenomenological Approach.....	203
6.5.1.1 Identifying Common Meanings and Essences	205
6.5.1.2 Horizontalization of the Data	206
6.5.1.3 The Textual and Interpretative Analysis	207
6.5.2 The Discourse Analytic Method	208
6.5.2.1 Participants' Statements and Clusters of Themes	209
6.6 Conclusion	224
Chapter 7: Conclusion.....	226
7.1 Introduction.....	226
7.2 Addressing the Research Questions and Achieving the Research Aim.....	226
7.2.1 What is the Rationale for Compelling IDC Adjudication?	227
7.2.2 Have IDC Adjudicators Adopted Any Specific Measures to Protect Consumers?.....	228
7.2.3 Are Consumers Satisfied with the IDC?	230
7.2.4 What is the Most Effective ADR Option?	231
7.2.5 Explaining the Disconnect between the Doctrinal Analysis and the Practical Inquiry	241
7.4 Proposals for Reform	242
7.5 Recommendations for Further Studies.....	244
Appendix I: List of Cases	245
Canada	245
India	245
United Kingdom.....	245
United States	245
Th Kingdom of Saudi Arabia.....	245
Decisions of the Board of Grievances.....	246
Summary of IDC Decisions on Motor Insurance Disputes.....	246
Appendix II: Questionnaire on Insurance Dispute Resolution by the Insurance Dispute Committee in the Kingdom of Saudi Arabia	256
Information for Participants/Consent Form	256
Appendix III: Ethical Review	266
Bibliography	273

Chapter 1: Introduction

1.1 Background

The rise of globalisation and the need for foreign investment have resulted in widespread reform of the legislative and adjudicative frameworks in the Kingdom of Saudi Arabia (KSA) over the past three decades.¹ The KSA has the largest economy in the Middle East² and has been taking important steps to modernise its laws and legal procedures, particularly in the private sector.³ One area of great importance that has received little scholarly attention is the development of the insurance sector, including the enactment of the Cooperative Insurance Companies Control Law (CICCL)⁴ and its Implementing Regulations, alongside the creation and use of the Insurance Dispute Committee (IDC) and the Saudi Arabian Monetary Authority (SAMA) Appeal Committee to resolve insurance-related disputes.⁵ The expansion of the insurance market in the KSA has transformed this sector, that was previously a monopoly, into a relatively attractive area of private sector investment.⁶

However, there has been a long-running debate over the introduction of insurance products into the *Shariah*-based state of KSA.⁷ The concern is largely centred around the *Shariah*-permissibility of insurance products. Conventional insurance is deemed to be speculation on the incidence of the future event insured against.⁸ This is arguably contrary to the *Shariah* that prohibits *gharar* or uncertainty by requiring that the subject matter of the contract must be

¹ See MA Ramady, *The Saudi Arabia Economy: Policies, Achievement, and Challenges* (2nd edn, Springer 2010) 25; R Wilson, *Economic Development in Saudi Arabia* (Routledge 2004) 8; FRA El Sheikh, *The Legal Regime of Foreign Private Investment in Sudan and Saudi Arabia* (2nd edn, Cambridge University Press 2003) 21; and YA Al Samaan, *The Legal Protection of Foreign Investment in the Kingdom of Saudi Arabia* (Dar Al Andalus 2000) 34. The reforms may even be traced back to the early 1980s. See GN Sfeir, 'The Saudi Approach to Law Reform' (1988) 36(4) *The American Journal of Comparative Law* 729, 729-730.

² Wilson, *ibid*, 1-2.

³ For a critical analysis of the legal reforms, see FA Farhan, *Legal Impacts and Challenges Facing Saudi Foreign Direct Investment Law: Reforming Saudi Foreign Direct Investment Laws as a Case Study* (Unpublished PhD Dissertation, University of Portsmouth 2012); F Binaseed, *Factors Affecting Foreign Direct Investment Location in the Petrochemicals Industry* (Unpublished PhD Dissertation, Brunel University 2009).

⁴ Cooperative Insurance Companies Control Law, Royal Decree No M/32, July 2003, (2 Jumada II 1424).

⁵ See Saudi Arabian Monetary Authority, 'Rules and Regulations' (2017) <<http://www.sama.gov.sa/ar-sa/Laws/Pages/Insurance.aspx>> accessed 14 November 2019.

⁶ Oxford Business Group, *The Report: Saudi Arabia 2013* (Oxford Business Group 2013) 91-99. See also, D Mirah and Ra'ed Masa' deh, 'An Analysis of the Insurance Industry Regulator in Saudi Arabia and Jordan through the Comparison with Insurance Industry Regulator in the UK' (2014) 10(3) *Asian Social Science* 211, 212-216.

⁷ A Rahim et al, 'Islamic *Takaful*: Business Models, *Shariah* Concerns and Proposed Solutions' (2007) 49(3) *Thunderbird International Business Review* 371, 373-374.

⁸ *Ibid*.

ascertainable. The conventional insurance contract therefore potentially violates the *Shariah* because the benefits that are to be paid under the contract depend on the outcome of a contingency that is unknown at the time of signing the contract. For example, a policy based on the lifetime of the insured cannot be ascertained given that it is not known when the insured will pass on. *Gharar* prohibits such agreements because it is unfair to expect a party to consent to something whose essential elements are unknown.

Also, conventional insurance contracts are regarded as a form of *maysir* (gambling, which is prohibited by *Shariah*) because the insurer actually wagers on the death or misfortune of the policyholder.⁹ Where the latter takes an endowment policy, whereby the insurer promises to pay him a stated sum if he survives for specified period, the policyholder is betting premiums on the condition that he will still be alive after the specified period in order to receive payment or indemnity. Ismail describes this aspect of the conventional insurance contract as follows:

It's like putting money in a pot and rolling the dice, the lucky winner takes the pot. In the case of conventional insurance companies, they play the role of the 'House' and the insured plays the role of the gambler by placing a bet. The gain for the 'House' is always certain, while the gain for the better is doubtful; the person may gain or lose. Overall, the 'House' is against the gamblers, and the insurance company is against the insured, the 'House' and the insurance company are always winners.¹⁰

Ismail's description reflects the 19th century contention by Holt that insurance contracts are aleatory because they essentially depend on chance or the throw of a dice.¹¹ As such, conventional insurance undermines the *Shariah* given that it requires the parties to gamble on contingencies. Also, conventional insurance companies that invest collected premiums in interest-based projects violate the prohibition of *riba* (interest) under the *Shariah*.

1.1.1 Takaful

The Islamic Fiqh Council Decision No. 5 of 12 September 1977 (First Session) stated that conventional insurance contracts violate the *Shariah*, and only *takaful* contracts should be enforced in the KSA. The *takaful* (mutual guarantee) insurance is considered acceptable (in

⁹ However, it has been argued that the (conventional) insurance contract is different from a wager because the wager creates the risk, but the insurance contract exists independently from the risk, which is a contingency that may or may not occur. See D Boivin, *Insurance Law* (Irwin Law 2004) 28-29.

¹⁰ F Ismail, 'Insurance and *Shariah* Takaful: A Practical Alternative' (1998) 2(2) *Nida'ul Islam* 1, 3.

¹¹ CM Holt, *A Treatise on the Insurance Law of Canada, Embracing Fire, Life, Accident, Guarantee, Mutual Benefit, etc., with an Analysis of the Jurisprudence and of the Statute Law of the Dominion* (C Theoret 1898) 22.

many Islamic quarters) because it addresses the above *Shariah*-related concerns.¹² This type of insurance is based on the concepts of donation (*tabarru*) and mutuality (*ta'awun*), whereby the policyholder voluntarily transfers money to the insurer (*takaful* operator) without any consideration.¹³ The parties agree to share the losses and profits derived from the investment of the pooled fund. The fund is also used to assist participants on whom misfortune has befallen. The requirement to subscribe and the obligation to pay compensation in the form of returns reduces uncertainty. Since the policyholder does not wager his resources on a contingency, the element of *maysir* or gambling is also eliminated. The insurer or *takaful* operator is then prohibited from investing the collected premiums in interest-based projects. It must be noted that the *takaful* operator is the custodian of the pooled fund, not the owner, and all the participants (including the policyholders) share in the risk.

The company is required to maintain two distinct funds, namely the participants' or policyholders' fund, and the shareholders' fund. The former is the pool of money that participants or policyholders contribute, while the shareholders' fund is the operating fund that holds the seed money provided by the shareholders. The latter fund pays for the administrative expenses of the start-up and some of it is invested. The profits from the investments are kept in the shareholders' fund. The management fees paid by the participants are also kept in the shareholders' fund. However, the claims by participants or policyholders are paid out of the participants' fund. Remaining surpluses, after the estimated cost of future claims are deducted, are kept in the participants' fund because the surpluses belong to the participants and not the operator. The surpluses are distributed to the participants as reductions in future contributions or cash dividends.

Although there are different variations and models (such as *mudaraba* and *wakala*) of *takaful* in different Islamic countries,¹⁴ they largely seek to address the above *Shariah*-related concerns. Nonetheless, the fact that the models are based on payment for a defined loss in the future from a fund set up by participants (policyholders), raises the question of whether the *takaful* is not the same as a conventional insurance contract.¹⁵

¹² Rahim et al (note 7) 374-376.

¹³ H Askari, Z Iqbal and A Mirakhor, *Introduction to Islamic Economics: Theory and Application* (Wiley 2015) 210-212.

¹⁴ See for example, A Nana, 'A Proposed Marriage between Endowments, Mutual Insurance and the Institution of Agency in Islamic Law: Introduction to the Waq-f Wakala Model of the Takaful' in SN Ali and S Nisar (eds), *Takaful and Islamic Cooperative Finance: Challenges and Opportunities* (Edward Elgar 2016) 82-86.

¹⁵ See H Abdou, K Ali and R Lister, 'A Comparative Study of Takaful and Conventional Insurance: Empirical Evidence from the Malaysian Market' (2014) 4(1) *Insurance Markets and Companies: Analyses and Actuarial Computations* 22, 23-34. See also, MS Matsawali et al, 'A Study of Takaful and Conventional Insurance

1.1.2 The Cooperative Insurance Structure in the KSA

With the enactment of the CICCL in the KSA in 2003, the scope of permissible insurance products was broadened to include those that may not necessarily be considered *takaful* but that comply with the cooperative insurance model.¹⁶ Cooperative insurance, as implemented in the KSA, has offerings comparable to conventional insurance offerings in most Western nations.¹⁷ Separate accounts must also be kept for the shareholders and the policyholders as per Article 2 of the CICCL. Article 70 of the Implementing Regulations (Surplus Distribution Policy) provides that the insurance company should distribute 10 per cent of the net surplus directly to policyholders or participants or the 10 per cent must be given to them in the form of reductions in premiums. 90 per cent of the net surplus is transferred to the shareholders' income statement.

It follows that the CICCL encourages 'associations of persons united voluntarily to meet their economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.'¹⁸ The *takaful* may be said to be the same as the cooperative insurance model because it is based on self-help and solidarity, and the policyholder receives a portion or share of the ownership in proportion to the amount contributed. Risk is shared rather than transferred. This is because the *takaful* may be implemented using different models. The *takaful* cooperative model adopted in the KSA shares more features with the stock insurance model¹⁹ given that the donation made to the *takaful* fund is accompanied by an expectation of a return or profit. This is nonetheless contrary to the *Shariah* that requires donations to be non-contingent and non-binding.²⁰ Also, if the payment

Preferences: The Case of Brunei' (2012) 3(22) *International Journal of Business and Social Science* 163, 169-170 (conducted an empirical study that shows that many Muslims prefer *takaful* to conventional insurance contracts although their knowledge and understanding of the *takaful* is very limited).

¹⁶ DM Barakah and SA Alsalha, 'The Cooperative Insurance in Saudi Arabia: A Nucleus to Health Reform Policy' (2011) 21 *IPEDR* 6, 7-8.

¹⁷ For examples of the range of coverage policies, see Salama, 'Products' (2017) <<http://www.salama.com.sa/en-us/products.aspx>> accessed 14 November 2019.

¹⁸ This is the definition of cooperatives adopted by the International Cooperative Alliance, which has since 1895 been recognized by many countries as the competent authority for elaborating rules and principles that govern cooperatives. See D Prakash, 'The Principles of Cooperation: A Look at the ICA Cooperative Identity Statement' (2003) Participatory Management Development Advisory Network 1, 4 <http://www.uwcc.wisc.edu/info/intl/daman_prin.pdf> accessed 14 November 2019. See also, Overview of Mutual Structures' in SO Gonulal (ed) *Takaful and Mutual Insurance: Alternative Approaches to Managing Risks* (The World Bank 2013) 35.

¹⁹ Under this model, the stockholders (who are policyholders) finance the capital of the stock-based insurance company, the collected premiums cover the management costs and the capital provided by the stockholders is used to minimise the risk of loss in the company's operations. See Gonulal, *ibid*, 22.

²⁰ O Agha, 'Tabarru in Takaful: Helpful Innovation or Unnecessary Complication' (2009-2010) 9(1) *UCLA Journal of Islamic and Near Eastern Law* 102, 103.

is considered a donation, then the fund is not legally obligated to compensate the policyholder in the event where the latter suffers an insurable loss. That is why it has been argued that the introduction of the concept of donation or *tabarru* in insurance law creates an unnecessary complication.²¹

Nonetheless, the above uncertainty regarding the *Shariah*-compliance of different insurance models shows that insurance as a whole represents an uncharted territory in the KSA. As the Saudi legislators, insurers, and consumers have continued to move into this uncharted territory, it has become an issue of the utmost importance to protect consumer rights to ensure that consumers are not denied coverage in an arbitrary manner. The CICCL expressly acknowledges this and requires that insurance companies act in an honest, transparent and fair manner; avoid discrimination; communicate effectively with policyholders; take reasonable actions to resolve conflicts of interest, and quickly and efficiently address disputes over consumer coverage.²² An important measure introduced by the CICCL to protect policyholders in the KSA is the creation of a cost-effective forum outside of the courtroom in which policyholders can swiftly challenge the adverse coverage determinations by insurers. The forum, as noted above, is the IDC. As such, should a consumer have a cause of action arising from an insurer's breach of its obligations and the rights of the consumer, the resulting dispute would be heard before the relevant Primary Committee of the IDC.²³ The Saudi legislator and courts have not explained why all insurance disputes must be submitted to this dispute resolution forum. It is therefore uncertain whether it is a cheaper and more efficient alternative to litigation, as well as common forms of alternative dispute resolution (ADR) such as negotiation, mediation, and arbitration.

There are a number of reasons why it is desirable for insurance disputes to be heard by the Primary Committees of the IDC. First, the purpose of codifying insurance law and creating a dispute resolution tribunal was to ensure transparency, efficiency, and predictability in the dispute resolution process.²⁴ The governing IDC regulations address transparency by

²¹ Ibid.

²² W Hachem, S Wakerly and T Neighbour, 'Insurance and Reinsurance in Saudi Arabia: Overview' (ThomsonReuters, 1 April 2017). <[https://content.next.westlaw.com/Document/I1525498b9c6d11e498db8b09b4f043e0/View/FullText.html?contextData=\(sc.Default\)&transitionType=Default&firstPage=true&bhcp=1](https://content.next.westlaw.com/Document/I1525498b9c6d11e498db8b09b4f043e0/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true&bhcp=1)> accessed 14 November 2019.

²³ CICCL, Article 20.

²⁴ The decisions of the primary committees are available on the IDC website. General Secretariat of the Committees for the Resolution of Insurance Disputes and Violations, 'Committees Decision' (2017) <<http://www.idc.gov.sa/ar-sa/CommitteesDecisions/Pages/Riyadh.aspx>> accessed 14 November 2019.

permitting the publication of tribunal decisions,²⁵ which, to some extent, is intended to explain the Committees' rationales for such decisions.²⁶ Second, having a dedicated system of tribunals for resolving sector-specific disputes creates efficiency by relieving the burden on the overloaded generalist court system and by empanelling legal and insurance experts to hear insurance disputes.²⁷ Finally, the permissibility of the tribunals' consideration of comparative jurisprudence and previous tribunal decisions ought to effectively establish a set of precedents on which the tribunal can rely in rendering verdicts.²⁸ This creates more predictability for the parties, with regard to the way in which disputes are resolved, and should logically increase the level of satisfaction of the parties.

However, despite their initial appeal, the IDC is sometimes obliged to compete with commercial arbitration,²⁹ a more familiar ADR mechanism for foreign investors, when it comes to providing a forum for commercial disputes.³⁰ Confidentiality, better communication and a more constructive atmosphere are often associated with ADR, especially arbitration, which provides parties with a forum to bindingly determine elements of their case.³¹

SAMA sometimes recognises and enforces arbitration clauses in insurance contracts; giving parties the opportunity to make choices about the applicable procedural and substantive rules.³² Some parties, particularly investors who are unfamiliar with the Saudi Arabian legal system or *Shariah* law, find arbitration to be an attractive alternative. However, arbitration clauses are often drafted by the insurance companies themselves for their own benefit and may form part of a contract of adhesion that the insured or policyholder must agree to. Hence, arbitration often

²⁵ See Article 1 of Resolution No. 215 of 29/06/1430H and Article 13 of Resolution No. 190 of 9/5/1435H (Working Rules and Procedures of the IDC).

²⁶ See General Secretariat of the Committees for the Resolution of Insurance Disputes and Violations, 'Vision and Methodology' (2016) <<https://www.idc.gov.sa/en-us/CommitteesDecisions/Pages/VisionandMethodology.aspx>> accessed 14 November 2019.

²⁷ CICCL, Article 20; General Secretariat of the Committees for the Resolution of Insurance Disputes and Violations, 'About Committees' (2017) <<http://www.idc.gov.sa/ar-sa/Aboutus/PreliminaryCommittees/Pages/default.aspx>> 14 November 2019.

²⁸ M Beswetherick and S Alsaab, 'The New SAMA Insurance Dispute Committee Rules in the Kingdom of Saudi Arabia' (*Clyde & Co*, 1 April 2014) <<https://www.clydeco.com/insight/article/the-new-sama-insurance-dispute-committee-rules-in-the-kingdom-of-saudi-arab>> accessed 14 November 2019.

²⁹ Although SAMA requires all insurance disputes to be submitted to the IDC, it has in some instances allowed insurers to include an arbitration clause in contracts, such as where the insurer and policyholder agreed that English maritime law should govern any disputes that may arise under their contract. See Hachem, Wakerly and Neighbour (n 22) para 34.

³⁰ AJ Gemmell, 'Commercial Arbitration in the Islamic Middle East' (2006) 5(1) *Santa Clara Journal of International Law* 169, 169.

³¹ C Duve, 'Arbitration and Alternative Dispute Resolution in Insurance Law – A Practitioner's Approach' (2009) 10(2) *ERA Forum* 177, 178.

³² Arbitration is not available in all cases. Insurers are required to obtain SAMA's approval before incorporating an arbitration clause in an insurance policy. See Hachem, Wakerly and Neighbour (n 22) para 34.

favours the party with stronger bargaining power. Also, as noted above, insurance arbitration is not available where SAMA has not approved the incorporation of the arbitration clause in the insurance policy. Nonetheless, it must be noted that in many instances, parties with limited resources find arbitration to be an expensive option. Thus, in some countries, several insurance disputes still wind up in litigation although ADR options are readily available.³³ Also, in such countries, although ADR options are readily available, there is legislation requiring state insurance departments to assist in the resolution of individual consumer complaints, and empowering the departments to force a resolution where the insurer has violated a regulation.

In Australia for example, the Australian Financial Complaints Authority was established under the Corporations Act 2001 as an alternative to courts to resolve, amongst other disputes, disputes between consumers and insurers regarding insurance policies for domestic and personal items. In Ontario, Canada, the Ontario Insurance Commission created the Insurance Ombudsman under the Insurance Act and Automobile Insurance Rate Stability Act, 1996 as the last resort for the informal resolution of insurance disputes. Since 2002, all consumers across Canada have been encouraged to submit disputes regarding home, automobile, and business insurance policies to the General Insurance OmbudService. Lastly, in the United Kingdom, Parliament established the Financial Ombudsman Service under Part XVI and Schedule 17 of the Financial Services and Markets Act 2000 (as amended) to resolve disputes between financial businesses and their customers. Given that all insurance companies are governed by the rules of the Financial Conduct Authority, they are required to comply with the decisions of the Financial Ombudsman Service. Thus, consumers can submit insurance disputes to the Ombudsman Service which uses mediation to resolve the disputes; and when mediation fails, conducts a formal investigation and makes a final decision that binds the parties.

However, the above dispute resolution bodies are independent agencies, and parties who are not satisfied with their decisions may seek further resolution through litigation. This may be distinguished from the IDC which is a body attached to Saudi regulatory authority, SAMA, and whose decisions cannot be reviewed by courts. The decisions of the Primary Committees of the IDC can only be reviewed by the SAMA Appeal Committee, which reviews the decisions

³³ A good example is the USA, see D Asmat and S Tennyson, 'The Law and Economics of Insurance Bad Faith Liability' in D Schwarz and P Siegelman (eds), *Research Handbook on the Economics of Insurance Law* (Edward Elgar 2015) 415.

on their merits and may not endorse the Primary Committees' conclusions on questions of fact or exercise of discretion.

The KSA has therefore attempted to address the shortcomings of litigation and ADR options by creating a potentially more effective alternative that promises stronger protection for consumers. Like arbitration, this alternative uses an expert panel, flexible procedural rules, and allows the panel to consider comparative jurisprudence. This study seeks to determine whether it provides a better avenue for consumers to challenge adverse determinations than litigation and other forms of ADR.

1.2 Research Aim and Questions

This study seeks to ascertain whether the administrative tribunal created by the CICCL as the official and compulsory dispute resolution forum for all insurance disputes is the most effective dispute resolution option in the KSA. The administrative tribunal is the IDC. It is an institutional architecture that blends informal industry norms with formal doctrinal precedent. Given that it is the compulsory dispute resolution forum, it is important to determine whether this forum is more effective in ensuring that consumers are consistently indemnified.

This study is premised on the contention that the security promised by substantive insurance law to consumers is inconsequential if it cannot be delivered through an efficient and effective dispute resolution option. It follows that it is important to determine whether the IDC is an efficient and effective dispute resolution option.

Detailed consideration is given to the laws, regulations and institutions of the KSA. This is because the researcher is most familiar with the Saudi legal system and legal culture. Hence, the researcher seeks to examine how Saudi insurance laws, ADR laws and the institutional architecture for insurance disputes resolution interact in order to propose ways of enhancing consumers' access to dispute resolution in insurance cases in the KSA. The study assumes that Saudi law is an internally self-sustaining set of principles that may be assessed with no reference to any external or non-legal elements.³⁴ Thus, the focus is on enacted laws and

³⁴ This is referred to as identifying the 'black-letter law', see M McConville and WH Chu, 'Introduction and Overview' in M McConville and Wing Hong Chu (eds), *Research Methods for Law* (Edinburgh University Press 2007) 1.

regulations, including the principles of the *Shariah* as developed and established by the Hanbali School of Islamic Thought.³⁵ Moral precepts and policy are excluded.

The procedures and decisions of the IDC Primary Committees and the SAMA Appeal Committee are assessed in order to determine whether blending informal industry norms with formal doctrinal precedent³⁶ is more effective in ensuring that the security promised by substantive insurance law to consumers is not inconsequential. The IDC has jurisdiction for all disputes arising from insurance policies pursuant to Article 20 of the CICCL. Although Saudi law has traditionally been aligned with the civil law legal systems, the IDC uses adversarial hearings whereby the parties are required to find and present their evidence and arguments to an impartial panel which then decides in favour of the party that has more probative evidence and stronger legal arguments. Thus, although the focus is on Saudi law, this study also examines some foreign Islamic systems whose laws the IDC may take into account in relation to the settlement of insurance disputes. Article 9 of the IDC Working Rules and Procedures states that the Primary Committees may decide cases in light of rulings in comparative jurisdictions. These systems include the United Arab Emirates (UAE) and Pakistan. In the UAE, insurance disputes are settled by a specialised body called the Insurance Appellate Tribunal. This body is akin to the IDC. In Pakistan, insurance disputes are settled by the ordinary Islamic courts of law that are akin to the Board of Grievances that settled insurance disputes before the creation of the IDC.

The researcher derives principles from Saudi laws, as well as the cases that applied the laws, assembles the principles into a coherent framework and ascertains any order or rationality. The Saudi legal system is the real-life context from which the in-depth understanding of the complex interaction between insurance law and dispute resolution is generated. The Saudi legal system therefore enables the researcher to compare the litigation-based approach, the ADR approach, and the IDC, which involves accommodating formal doctrinal precedent within ADR structures in an administrative forum. Thus, in addition to the doctrinal analysis and empirical

³⁵ The *Hanbali* teachings remain the official doctrine of the Kingdom. See J Schacht, 'Pre-Islamic Background and Early Development of Jurisprudence' in M Khadduri and HJ Liebesny (eds), *Law in the Middle East: Origin and Development of Islamic Law* (Vol. 1, Lawbook Exchange 2008) 70; JJ Nasir, *The Islamic Law of Personal Status* (2nd edn, Graham and Trotman 1990) 18.

³⁶ Article 9(1) of the Working Rules and Procedures of the IDC provides that IDC Committees shall decide cases in accordance with the laws and regulations, and previous rulings. It is shown in this thesis that this represents a significant departure from the previous stance on the role of precedent in the *Shariah* system. An attempt is then made to determine whether it has enhanced the predictability of outcomes.

inquiry, the researcher is able to determine whether the Saudi legislator is justified in imposing the IDC by comparing this form of dispute resolution to other dispute resolution options.

The laws governing the IDC and the decisions of its adjudicators are therefore employed to test the relative explanatory capacity of alternative or competing theoretical explanations.³⁷ In this study, the main competing theories relate to the effectiveness of the support provided by the various dispute resolution options to consumer insurance law. The focus on one system has been said to be a suitable method for addressing explanatory research questions in social science.³⁸ The research questions outlined below are explanatory questions. The questions are addressed in order to achieve the research aim. The questions include:

- What is the rationale for compelling IDC adjudication?
- Have IDC adjudicators adopted any specific measures to protect consumers?
- Are consumers satisfied with the IDC?
- What is the most effective ADR option for policyholders seeking to challenge the adverse determinations of insurers in the KSA?
- Can an empirical study explain the disconnect between the doctrinal analysis and the findings of a practical inquiry of the IDC?

The consumer-centred approach is deemed to be the best way to study the effectiveness of the IDC because, as shown in Chapter 3, the IDC is intended to be an accessible and cost-effective alternative to litigation and other forms of ADR. Thus, since previous studies have shown that most consumers in developing countries are at the bottom of the wealth or income pyramid,³⁹ the IDC may only be said to be a cost-effective alternative to litigation and other forms of ADR, if the IDC is accessible to the poorest socio-economic group, and most of them are satisfied with the procedures and outcomes.

³⁷ See S Van Evera, *Guide to Methods for Students of Political Science* (Cornell University Press 1997) 88.

³⁸ RK Yin, *Case Study Research: Design and Methods* (5th edn, Sage 2014) 14; R Withana, *Power, Politics, Law: International Law and State Behaviour During International Crises* (Martinus Nijhoff 2008) 80-82.

³⁹ See Z Ismail and MS Baloch, 'Bottom of the Pyramid Market's Consumer Behaviour with Regard to Branded Personal Care Products in Karachi: A Quantitative Study' (2015) 6(6) *International Journal of Business and Social Science* 56, 57-58; J Verghese and P Malayiya, 'Consumer Behaviour at the Bottom of the Pyramid' in S Samu, Vaidyanathan R and Chakravarti D, *Asia-Pacific Advances in Consumer Research* (Vol 8, Association for Consumer Research 2009) 123; K Davidson, 'Ethical Concerns at the Bottom of the Pyramid: Where CSR Meets BOP' (2009) 2(1) *Journal of International Business Ethics* 22, 22-23.

Consumer satisfaction is the criterion to determine the effectiveness of the IDC from a practical and empirical viewpoint because satisfaction has been demonstrated to be a surrogate measure of effectiveness and a reliable arbiter of the success of public organisations.⁴⁰ Satisfaction has been studied from different aspects with the focus largely on the expectations of users prior to the experience of using the services or products and the perception of the users after using the service or product. Thus, satisfaction as a measure determines how services or products meet the expectations of users.⁴¹ Also, satisfaction data are established indicators of perceptions, and it has been shown that satisfaction is highly correlated with effectiveness and efficiency.⁴² These may explain why the General Secretariat also used satisfaction as the sole measure of efficiency and effectiveness.

1.3 Significance of the Contribution to Research

This thesis explores and critically analyses the legal and practical problems associated with the Saudi legislation governing the IDC and the procedural rules and regulations that manifest in their proceedings. It seeks to determine whether these legal problems have resulted in outcomes of proceedings being delayed, inconsistent, and whether they measure up to the intended goals of the reform of the Kingdom's insurance sector. Also, it seeks to determine whether the resolution process in courts is effective in relation to the cost incurred by the parties, especially consumers or policyholders. Given that the legislator has imposed the IDC on parties seeking to settle a dispute, there is a need for an in-depth study of the IDC rules and procedures. The researcher was unable to find any published work that performs this task.

This study therefore critically examines the IDC and seeks to determine whether the Saudi legislator has achieved the aim of creating a fast and accessible resolution forum for consumers. It seeks to determine why this dispute resolution forum is compulsory for all insurance disputes, whether it is the most effective option available to consumers, and whether the latter are satisfied with the procedures and outcomes.

⁴⁰ See H Hill et al, *Customer Satisfaction* (Cogent 2007) 18-28. See also AW Gatian, 'Is User Satisfaction a Valid Measure of System Effectiveness?' (1994) 26(3) *Information & Management* 119, 119-131.

⁴¹ See RA Westbrook and RL Oliver, 'The Dimensionality of Consumption Emotion Patterns and Consumer Satisfaction' (1991) *Journal of Consumer Research* 84, 84-91.

⁴² See E Hirons et al, 'External Customer Satisfaction as a Performance Measure of the Management of a Research and Development Department' (1998) 15(8/9) *Journal of Marketing* 21, 21-31; S Joo, 'How are Usability Elements – Efficiency, Effectiveness, and Satisfaction – Correlated with Each Other in the Context of Digital Libraries?' (2010) *ASIST* 1, 1-2.

As such, this research does more than only identify the shortcomings of the CICCL and its Implementing Regulations, as well as the Working Rules of the IDC. It also undertakes to illustrate how these shortcomings affect outcomes of cases in practice and addresses the implications of these results. In addition, it meets the challenge of proposing specific legislative changes to remedy the flaws in the CICCL and Working Rules for IDCs.

1.4 Methodology

The rapid growth of economies, and the expansion of industry sectors and commerce have given rise to an increase in the number of disputes that need to be resolved expeditiously.⁴³ The Saudi legislator requires the submission of all insurance-related disputes to the IDC. To determine whether this is the best forum for resolving insurance disputes in the KSA, this research employs three primary methodologies: doctrinal analysis, practical inquiry, and empirical inquiry; taking into account the socio-legal nuances of the KSA as a primarily civil law state whose Constitution is the Holy Quran.

The doctrinal analysis focuses on the sources of law that guide and constrain Saudi judges, mediators, arbitrators, and the IDC. The line of progress for these different options available to policyholders is charted. The doctrinal method includes determining whether legal precedent has been developed, and assessing legislative reform and legislative interpretation and application over time.⁴⁴ This study therefore conducts a critical conceptual analysis of the relevant insurance laws and regulations, thereby revealing the underlying applications and motives for legislative reform in the Kingdom.⁴⁵ By systematically evaluating the rules governing insurance dispute resolution, the study assesses the relationship between different dispute resolution options as they exist, as well as their desired or predicted and actual outcomes.⁴⁶ Doctrinal research of the existing insurance regulations provides a detailed analysis and creative synthesis⁴⁷ of the way in which the provisions, or gaps therein, correlate

⁴³ J MacFarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (UBC Press 2008) 9.

⁴⁴ T Hutchinson, 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law' (2015) 3 *Erasmus Law Review* 130, 130.

⁴⁵ T Hutchinson, 'Vale Bunny Watson? Law Librarian, Law Libraries and Legal Research in the Post-Internet Era' (2014) 106(4) *Law Library Journal* 579, 584.

⁴⁶ D Pearce et al, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Service 1987) 312.

⁴⁷ Council of Australian Law Deans, 'Statement on the Nature of Legal Research' (May/October 2005) 3.

with the achievement of the KSA's legislative reform goals and the protection of party rights in insurance dispute resolution.

In addition to the doctrinal analysis, a practical inquiry is also conducted. This is a practical reason approach that places emphasis on decisional methodology: how the relevant parties perceive the process and outcome, and how IDC adjudicators decide cases.⁴⁸ This is inspired by Bingham's contention that 'judicial generalizations are of questionable accuracy and utility.'⁴⁹ Also, since the researcher seeks to depict the essential display between theory and practice in the complex and interconnected world of insurance dispute resolution, he heeded Kevelson's advice that what is needed in such instances is not further doctrinal analysis but a method that demonstrates that discovery and inquiry in thought are representations of actual phenomenal processes in the world of experience.⁵⁰ In other words, the theories and doctrines analysed must be integrated with the working of the IDCs in practice.

Thus, the practical inquiry shifts the emphasis from the doctrinal analysis of the rules governing the IDC to assessing the practical effects of the use of the IDC option. This is also important because the practical inquiry may provide different findings to the theoretical and doctrinal analysis. Thus, it would be imprudent to submit that the IDC is a more effective dispute resolution option than litigation, negotiation, mediation, or arbitration, without examining the external observation of the IDC and determining its practical and functional utility.

Finally, the empirical inquiry focuses on adjudication in the IDC, and more particularly how IDC adjudicators perceive the IDC as a dispute resolution option, and what they do to protect consumers or policyholders challenging arbitrary adverse coverage determinations by insurers. The qualitative study used the five-stage process developed by Hess.⁵¹ This process involves the study design and ethics, sampling, data collection, data analysis, and the report. The

⁴⁸ JM Feinman, 'Practical Legal Studies and Critical Legal Studies' (1988) 87 *Michigan Law Review* 724, 724, 728-731 (contrasting critical legal studies and practical legal studies).

⁴⁹ JW Bingham, 'What is the Law?' (1912) 11 *Michigan Law Review* 1, 9, 15-16 ('The lawyer, as does the scientist, studies sequences of external phenomena and he studies them with a similar purpose-to determine their causes and effects and to acquire an ability to forecast sequences of the same sort'). See also VA Wellman, 'Practical Reasoning and Judicial Justification: Toward an Adequate Theory' (1985) 57 *Colorado Law Review* 45, 46, 90-92 (discussing the use of case studies to support the contention that the practical application of theory is viable); DA Farber and PP Frickey, 'Practical Reason and the First Amendment' (1987) 34 *UCLA Law Review* 1615 (proposing the practical reason approach and criticising the assessment of the first amendment law based on abstract theories).

⁵⁰ R Kevelson, 'Semiotics and Methods of Legal Inquiry: Interpretation and Discovery in Law from the Perspective of Pierce's Speculative Rhetoric' (1986) 61(3) *Indiana Law Journal* 355, 359.

⁵¹ GF Hess, 'Qualitative Research on Legal Education: Studying Outstanding Law Teachers' (2014) 51(4) *Alberta Law Review* 925, 928-938. The five-stage process is based on a synthesis of two important studies on educational research. These are discussed in Chapter 6.

sampling strategy used by the researcher was purposive sampling. This is because it is suitable for the selection of persons with a wealth of information related to the phenomenon of interest.⁵² It also enabled the researcher to make effective use of limited resources. Specifically, the researcher used criterion-based purposeful sampling to describe and illustrate what is typical to adjudicators of the IDC. It enabled the researcher to narrow the range of variations in order to focus on the similarities in adjudicators' decision-making processes regarding how they protect consumers who are in desperate need of money and are challenging the arbitrary adverse determinations by insurers.

The size of the sample that was selected was 34 adjudicators or members of the IDC, whether they served as legal advisors or panel members drawn from the insurance industry. All the participants voluntarily participated in the study. A single criterion was used to select a sample of these nominees to include in the study: active IDC members or adjudicators who were available and willing to participate in the study.

The researcher used the questionnaire to collect qualitative data. The questionnaire (see Appendix II) was delivered to participants in an electronic format via email. It was accompanied by instructions. It was designed with the objective of asking research questions in a neutral and objective manner. The original version was in Arabic. The participants were able to complete the questionnaires diligently in the calm of their offices or home. Their answers were translated into English by the researcher.

In order to prepare the data for analysis, the data was organised into file folders, with one document for each of the adjudicators who participated in the study. The researcher used phenomenology⁵³ to analyse the data because the research problem required a profound understanding of the experiences common to IDC adjudicators and their motivations in assessing the law and facts and arriving at conclusions. Padilla-Diaz notes that the role of the phenomenological researcher is to build the studied object according to its own manifestations and components.⁵⁴ Thus, the researcher delved into the experiences, perceptions and

⁵² See MB Miles and AM Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (2nd Sage 1994) 24.

⁵³ This is a qualitative research method that enables the researcher to build the studied object according to its own manifestations and components. Thus, the researcher constructed a theory regarding satisfaction with the IDC using the perceptions and perspectives of IDC adjudicators as building blocks. This is explained further in Chapter 6.

⁵⁴ M Padilla-Diaz, 'Phenomenology in Educational Qualitative Research: Philosophy as Science or Philosophical Science?' (2015) 1(2) *International Journal of Education Excellence* 101, 104.

perspectives of IDC adjudicators and used these elements to construct a theory regarding how consumers are satisfied with the IDC because adjudicators issue fair and just decisions.

The analysis of the empirical data therefore involved three things: identifying common meanings and essences; horizontalization of the data; and textual and structural analysis of the data. In order to identify common meanings, the researcher excluded his own meanings, perceptions and interpretations and entered into the participants' unique world. This ensured the objectivity of the analysis of the data.

The researcher also extracted and isolated expressions that illuminated the researched phenomenon. Clusters of themes were formed by grouping the units of expressions and their meanings together. The textual and interpretative analysis involved linking different themes in order to ascertain a common and distinct perspective on the effectiveness of the IDC as a dispute resolution body with regard to the protection provided to consumers or policyholders. A summary of all the themes that emerged from the analysis provides a holistic perspective of IDC adjudicators. Thus, the textual and interpretative analysis essentially involved analysing discourse. Discourse was considered to be information or persuasion.

Given that this research involved human participants and personal data, the researcher carefully reviewed and followed the University's regulations. The researcher ensured that the study complied with all legal and ethical requirements, as well as the relevant guidelines. Also, the researcher ensured that all participants signed a consent form (see Appendix III). The researcher kept the participants' answers confidential. They were only identified only by a code number.

1.5 Research Limitations

There are certain limitations to this study, which should be taken into account. Although they do not ultimately affect the findings and proposals as well as the recommendations made in this work, they were important obstacles to certain areas of analysis.

From a legislative perspective, the CICCL, its Implementing Regulations and the complementary laws and rules are still relatively new. The IDC is a system that is still in its infancy and so it has yet to be challenged by the test of time and academic evaluation. As such, there has been little material written on the subject. Moreover, the Saudi government has failed to provide any additional guidance on interpreting the relevant rules and regulations, such as

explanatory notes and circulars of the regulator, SAMA. Also, scholars have given this area little attention. Given the time it takes for these mechanisms to be put in place and for parties to begin using them, the amount of empirical data that may be collected is also limited by time and the number of cases submitted to the IDC. In fact, the IDC Primary Committees did not begin to receive full caseloads until around 2008. This in turn means that there has been just one decade of decisions and societal awareness of the IDC process.

The integration of principles of Islamic law into the Saudi legal system also makes it difficult to conduct a doctrinal analysis. As will be shown in Chapters 5 and 6, the adjudicators neither rely on nor develop religious constrictions. The approach adopted is largely secular, although they are required to prioritise Islamic law. The introduction of Islamic law into the equation therefore renders it difficult to properly assess the legal systems because there are no principles unique to the *Shariah* in insurance dispute resolution. Nonetheless, in assessing the various models (IDC, litigation, negotiation, mediation, and arbitration), the researcher sought to determine whether they were *Shariah*-compliant.

Finally, the researcher encountered some difficulties in the use of the purposeful sampling strategy. For example, it was uncertain what was the range of variation in the sample of IDC members, or adjudicators, from which the researcher took the purposive sample. Thus, the researcher assumed that all IDC adjudicators are potential information-rich participants without regard to whether the adjudicators who accepted to participate in the study were actually as knowledgeable as the adjudicators who did not participate in the study. Also, the researcher was unable to use an iterative approach of sampling and re-sampling⁵⁵ in order to select a suitable sample of adjudicators who actually possessed a wealth of information.

The researcher could have selected only adjudicators who had issued more than 100 decisions or served as adjudicators or judges for more than 10 years. However, such criteria would still not have ensured that the adjudicators who participated in the study were actually as knowledgeable or even more knowledgeable when compared to adjudicators who did not participate in the study. Nonetheless, since the researcher used the phenomenological approach,

⁵⁵ This involves moving back and forth between the cases that have been selected for data collection and analysing the data as they are collected. Subsequent sampling decisions are then determined by what emerges from the analysis of the data. See MN Marshall, 'Sampling for Qualitative Research' (1996) 13(6) *Family Practice – An International Journal* 522, 523-524.

the researcher did not rely on the sampling to ensure that theoretical saturation occurred.⁵⁶ The researcher simply relied on the theory that emerged from the data.

1.6 Thesis Structure

This thesis is divided into seven chapters; the first being this Introduction, which outlines the research aim, research questions, and research methodology. The following six chapters comprise the substantive analysis of this thesis; identifying and elaborating on the problem and working towards the proposal of legal and practical solutions.

Chapter Two seeks to answer the first research question regarding the rationale for compelling a form a dispute resolution. It provides the background information to the substantive analysis of the thesis. It explains the legal sources of insurance law in the KSA in order to gain an understanding of how insurance legislation fits into the Saudi legal framework. It discusses the development of the Saudi insurance sector and looks at how the CICCL has reconciled cooperative insurance with *Shariah* principles. Stress is placed on the changes introduced by the CICCL, including giving insurance a formal legal status and regulating the industry. The Chapter also discusses the role of SAMA as the regulator and assesses the obligations imposed on policyholders, insurers, and brokers. It shows that insurance law in the KSA is essentially public interest law and argues that this justifies providing disputants with a single interest-based process for dispute resolution rather than multiple process options that may include other options such arbitration, negotiation, and litigation which insurance companies may use to undermine the interests of policyholders and the public.

Chapter Three seeks to answer the research question regarding the rationale for compelling IDC adjudication. Unlike Chapter 2, it seeks to answer this question by comparing the IDC adjudication to the litigation-based approach. It discusses the importance of litigation in enabling policyholders to challenge insurers' adverse determinations, as well as the shortcomings of the litigation model. It then considers the argument that the expense and unpredictability of litigation could be avoided or reduced by channelling disputes towards an administrative system. The concept and nature of the administrative tribunal are assessed, followed by the use of the model in Islamic systems. It is argued that the IDC is an administrative tribunal. Thus, in light of the use of the administrative model in different

⁵⁶ For a thorough discussion on how this can be achieved in qualitative studies, see B Saunders et al, 'Saturation in Qualitative Research: Exploring Its Conceptualization and Operationalization' (2018) 52(4) *Quality and Quantity* 1893, 1893-1905.

jurisdictions and the absence of a solidly grounded theoretical understanding of the model in the KSA, the profile of the archetypal administrative tribunal is mapped. It is then determined how the IDC compares to the archetypal administrative tribunal. It shows that the IDC lacks some of the fitting qualities of the archetypal tribunal and is not a better option than litigation for resolving disputes over insurance cover. The shortcomings identified include the lack of clarity in IDC procedures, and ambiguities within the empowering legislation.

Chapter Four is the third step towards answering the research question of the rationale for compelling IDC adjudication. Unlike Chapters 2 and 3, it answers this question by examining other forms of alternative dispute resolution (ADR) available in the KSA and determining whether they are more effective than the IDC adjudication. The ADR options examined include negotiation, mediation, and arbitration. The chapter seeks to determine whether each of these forms of ADR may help overcome the shortcomings of the IDC identified in Chapter 3. It is shown that although negotiation and mediation may not be slow, laden with rules, and costly, they are less appealing to policyholders than administrative tribunals because third parties who mediate or facilitate negotiations cannot enforce their decisions or have them enforced. It is also shown that arbitration is effective but does not confer any unique advantage regarding fairness and privacy. The parties to the arbitration are provided the same protection as disputants in the IDC. However, arbitration has an advantage over the administrative tribunal model regarding timely determinations.

Chapter Five adopts a practical reason approach, following from the doctrinal legal inquiry in the previous chapters. This approach emphasises decisional methodology: how parties perceive the process and outcome, and how IDC adjudicators decide cases. Thus, this Chapter seeks to answer the research questions of whether IDC adjudicators have adopted any specific measures to protect consumers, and whether consumers satisfied with the IDC. It shifts the emphasis from the doctrinal analysis of the rules governing the IDC to assessing the practical effects of the use of the IDC option. It stresses the importance of an objective and external observation of this dispute resolution option so as to determine whether, despite the shortcomings of the CICCL and Working Rules, the IDC has practical and functional utility, thereby justifying the Saudi legislator's preference for this option. The Chapter analyses data of surveys conducted by the General Secretariat of the Committees for the Resolution of Insurance Disputes and Violations, as well as decisions of the IDC Committees. The objective is to ascertain whether the level of satisfaction of the users of the IDC may be correlated with the fairness of the decisions of the Committees. An attempt is also made to determine whether the level of

satisfaction of the users of the IDC may be explained by the fact that the users believe the IDC is better than other dispute resolution options.

Chapter Six discusses and analyses the findings of the empirical inquiry that sought to test the theory that the level of satisfaction of parties, specifically consumers or policyholders, is strongly linked with their satisfaction with the outcomes of the hearings or whether they believe the adjudicator's decision is fair. This Chapter therefore seeks to answer the research question of whether IDC adjudicators have adopted any specific measures to protect consumers. Answering this question enables the researcher to determine the relationship between the doctrinal analysis of the law governing dispute resolution by the IDC (conducted in Chapters 3 and 4) and the practical inquiry conducted in Chapter 5.

The research focused on how IDC adjudicators perceive the IDC as a dispute resolution option, and what they do to protect consumers or policyholders challenging arbitrary adverse coverage determinations by insurers. A five-stage process was used. This involved the study design and ethics, sampling, data collection, data analysis, and the report. This chapter explains how the researcher accomplished each phase. Emphasis is placed on the discourse analytic method which the researcher employed to capture the perspectives of the IDC adjudicators.

Finally, **Chapter Seven** concludes the study by showing how the research questions were addressed in order to achieve the research aim. It also makes proposals for reform and recommendations for further studies.

Chapter 2: The Legal and Regulatory Framework Governing Insurance in the Kingdom of Saudi Arabia (KSA)

2.1 Introduction

This Chapter lays the foundation for the substantive analysis. It explains the legal sources of insurance law in the KSA, in order to gain an understanding of how insurance legislation fits into the Saudi legal framework. It begins with a brief analysis of the structure of the Saudi judicial system and explains why the *Quran* and *Sunnah* serve as the Kingdom's Constitution, as well as why the government's authority is derived from these sources. It then discusses the development of the Saudi insurance sector and how it has moved, from being a monopolised system to becoming a thriving economic market, under the regulation and supervision of the Saudi Central Bank, namely the Saudi Arabian Monetary Authority (SAMA). Next, this Chapter looks at how the Cooperative Insurance Companies Control Law (CICCL) has reconciled cooperative insurance with *Shariah* principles. It emphasises the changes introduced by the statute, including giving insurance a formal legal status and regulating the industry. The Chapter also discusses SAMA's role as the regulator, and assesses the obligations imposed on policyholders, insurers, and brokers. It shows that insurance law in the KSA is essentially public interest law and argues that this justifies providing disputants with a single, interest-based process for dispute resolution; rather than multiple process options, which may include other options that can be used by insurance companies to undermine the interests of policyholders and the general public. This Chapter therefore seeks to answer the first research question regarding the rationale for compelling a form of dispute resolution.

2.2 Saudi Arabia's Legal and Judicial System

In order to understand the nature and role of insurance law in Saudi Arabia, it is important to ascertain the fundamental concepts that shape the Kingdom's legal system. It is a relatively new system, established in 1932 at the beginning of the reign of Abdul-Aziz ibn Sa'ud (1932-1953), founder and first King of Saudi Arabia.⁵⁷ King Sa'ud took control of Hijaz and began to unite the territories, with the goal of building a strong nation, while at the same time respecting

⁵⁷ See AA An-Naim, *Islamic Family Law in a Changing World: A Global Resource Book* (Zed Books, 2002), 136. See also, GN Sfeir, 'The Saudi Approach to Law Reform' (1988) 36(4) *The American Journal of Comparative Law* 729, 730-732; AF Ansary, 'A Brief Overview of the Saudi Arabian Legal System' (GlobaLex, 2008) <http://www.nyulawglobal.org/globalex/Saudi_Arabia.html> accessed 14 November 2019.

the culture and history of its people.⁵⁸ Determining that the best way to achieve this goal was through the application of Islamic doctrine to public life and the government's infrastructure, King Sa'ud began to transform the fragmented territory into organised Provinces.⁵⁹

However, by 1926, the system had already begun to take shape with the approval of the Basic Regulation (*al-Talimat al Assasiah*) for Hijaz Province after the occupation of the Hijaz Kingdom.⁶⁰ This law essentially served as the constitution for the area and resembled the constitutions of many modern states; establishing the infrastructure and system of governance.⁶¹ This system continued to evolve and develop, until Hijaz and the other Provinces were united to form a single Kingdom in September 1932.⁶² Thus, under the reign of King Sa'ud, the Saudi government continued to develop various Ministries for domains such as defence, internal affairs, finance and communications. In October 1953, the Council of Ministers was established; this basic structure remained in place, with some modifications, until the reign of King Fahad ibn Abdul-Aziz (1982-2005).⁶³

King Fahad bin Abdul-Aziz began the process of codifying Saudi constitutional principles.⁶⁴ In March 1992, the King issued Royal Orders to establish three fundamental Laws: the Basic System of Governance, the Consultative Council Law, and Regional Law.⁶⁵ The Basic System or Law was arguably the most important of these statutes.⁶⁶ However, it provided that the *Quran* and *Sunnah* constitute the Kingdom's Constitution, and the government's authority is

⁵⁸ AH Dahlan, *Dirasa Fi Al-Siyyasah Al-Dakhiliyyah Li-Al-Mamlakah Al-Arabiyyah Al-Sa'udiyyah* [A Study in the Internal Politics of the Kingdom of Saudi Arabia] (1984) 31-33; Faisal Ibn Misha'l Al-Su'ud, *Islamic Political Development in the Kingdom of Saudi Arabia; Majlis Ash Shura: Concept, Theory and Practice* (2002) 51.

⁵⁹ Ansary (n 1).

⁶⁰ Ibid.

⁶¹ Ibid; Dahlan (n 2), 121-126; SA Solaim, *Constitutional and Judicial Organizations in Saudi Arabia* (Unpublished PhD Dissertation, Johns Hopkins University, 1970), 3-26.

⁶² Ansary (n 1).

⁶³ Solaim (n 5), 3-26.

⁶⁴ See AM Al-Mehameed, 'The Constitutional System of Saudi Arabia: A Conspectus' (1993) 8(1) *Arab Law Quarterly* 30, 30-31.

⁶⁵ Basic Law of Governance, Royal Order No. A/90, (27/8/1412H, Mar. 1, 1992); The Regional Law, Royal Order No. A/91 (27/8/1412H, Mar. 1, 1992); The Shura Council Law, Royal Order No. A/91, (27/8/1412H, Mar. 1, 1992).

⁶⁶ Ansary (n 1). Al-Mehameed states that it possesses the nature and meaning that are generally attributed to the written constitutions of countries. See Al-Mehameed (n 8), 30. Ghazi also contends that the Basic Law acts as the constitution, since it has the highest influence on the hierarchical normative order, and it organises and controls power, balances competing claims of individual and social interest, and mirrors the country's culture and experience. See MA Ghazi, 'Constitutional Human Rights: Saudi Perspective' (2010) 4(3) *Journal of Middle Eastern and Islamic Studies* 28, 29.

derived from these sources.⁶⁷ This system is still in place today. It ensures that courts in the Kingdom prioritise legal principles derived from teachings of the *Quran* and *Sunnah*.

2.2.1 The Saudi Legal System

KSA is a constitutional monarchy, given that the King is bound to exercise powers within the limits prescribed by the *Quran* and *Sunnah*.⁶⁸ Political power is shared between the King and the Council of Ministers, comprising the Kingdom's executive and legislative authorities.⁶⁹ The role of the Council of Ministers is to propose legislative acts and perform executive functions. However, final authority for all matters, whether legislative, executive or judicial, rests with the King.⁷⁰

Since the Quran represents the Constitution, the Saudi legal system is based on the principles of *Shariah*, which regulate all aspects of Muslim societies and states, including the methods by which legal rights are enforced.⁷¹ The *Shariah* foundation is reflected in Article 7 of the Basic Law, which provides that '...Government in the Kingdom of Saudi Arabia derives its authority

⁶⁷ Basic Law of Governance, Article 7. Although there is no evidence that the King sought to embrace the natural law theory, it may be argued that Article 7 of the Basic Law endorses the paradigmatic natural law view that natural law is derived from God and is knowable by all human beings and authoritative over them, without exception. For an analysis of the paradigmatic natural law view, see MC Murphy, 'The Natural Law Tradition in Ethics' (2002) *Stanford Encyclopedia of Philosophy* (substantive revision 27 September 2011) <<https://plato.stanford.edu/entries/natural-law-ethics/>> accessed 14 November 2019. See also, MC Murphy, 'Natural Law, Consent and Political Obligation' in EF Paul et al (eds), *Natural Law and Modern Moral Philosophy* (Cambridge University Press, 2001), 70-71. It has also been contended that Article 7 of the Basic Law embraces the philosophy of unifying the law of God with the law of nature. See Ghazi (n 10), 30-31. The adoption of this philosophy in the KSA may be traced to the School of Abd Al-Wahhab, which influenced the modern development of the Hanbali School of Jurisprudence; rejecting judicial precedents and recommending an independent interpretation of the Quran and Sunnah to derive relevant rules and resolve disputes. For an analysis of the Wahhabi School, see NJ DeLong-Bas, *Wahhabi Islam: From Revival and Reform to Global Jihad* (Oxford University Press, 2004).

⁶⁸ However, this is subject to debate. Some commentators argue that a constitutional monarchy requires a power-sharing arrangement between the monarch and parliament. Hence, the KSA is a ruling monarchy, because the monarch can form or terminate the government without consulting other institutions. See K Alboaoth and J Mahoney, 'Religious and Political Authority in the Kingdom of Saudi Arabia: Challenges and Prospects' (2017) 6(2) *MANAS Journal of Social Studies* 241, 244. See also, A Stephan, J Linz and J Minoves, 'Democratic Parliamentary Monarchies' (2014) 25(2) *Journal of Democracy* 35, 35-51. However, Alboaoth and Mahoney's argument is based on the substantial discretionary powers granted to the Saudi King by the Basic Law, which they describe as the 'Constitution'. Nonetheless, the Basic Law is not the Constitution of the KSA. Instead, the Quran and Sunnah constitute the Constitution and provide the rules by which all Muslims, including the King, are required to abide.

⁶⁹ Basic Law of Governance, Article 5(a), 44.

⁷⁰ Ibid, Article 44. This reinforces the argument that the KSA is a ruling, not a constitutional monarchy.

⁷¹ AA Al-Ghadyan, 'The Judiciary in Saudi Arabia' (1998) 13(3) *Arab Law Quarterly* 235, 236. See also, A Amanat, 'Preface' in A Amanat and F Griffel (eds), *Shari'a: Islamic Law in the Contemporary Context* (Stanford University Press, 2009).

from the Book of God Most High and the *Sunnah* of His Messenger...⁷² Nonetheless, there is often disagreement over the way in which *Shariah* law is to be interpreted and applied. This is reflected in the development of four main *Sunni* schools of thought: the *Hanafi*,⁷³ *Maliki*,⁷⁴ *Shafi'i*⁷⁵ and *Hanbali*⁷⁶ schools. These schools were established by their respective leaders throughout the eighth and ninth centuries.⁷⁷ Within the teachings and interpretations of each school of thought, one can identify practical differences in their approach to applying *Shariah* texts to various situations.⁷⁸ Given this array of approaches, it can be difficult to determine how a dispute should be resolved. However, the Saudi legal system has generally adopted the conservative *Hanbali* School as its primary source of interpretation.⁷⁹ Thus, the *Hanbali* School is the official school of Islamic jurisprudence. It provides guidance on how courts in the Kingdom should address legal questions.

2.2.2 The Judicial System

The Saudi judicial system may be broken down into three distinct forums: the *Shariah* courts, the Board of Grievances, and quasi-judicial committees.⁸⁰ The judicial forums are required to be independent and are not subject to any outside influence in exercising their judicial authority.⁸¹ Meanwhile, all judicial bodies are required to apply *Shariah* law in resolving any

⁷² It follows that the *Shariah* is the main check on the King's powers. This is why Sayen observes that the most successful governments in Saudi Arabia have been those that worked effectively with the religious establishment (*Shariah* scholars or Ulama), since this reassures the populace that the *Shariah* is being applied faithfully. See G Sayen, 'Arbitration, Conciliation and the Islamic Legal Tradition in Saudi Arabia' (2003) 24(4) *University of Pennsylvania Journal of International Economic Law* 905, 907.

⁷³ The Hanafi School was founded by Imam Abu Hanifah, Annuman ibn Thabit (699-767 AD).

⁷⁴ The Maliki School was founded by Imam Malik ibn Anas (712-795 AD).

⁷⁵ The Shafi'i School was founded by Imam ash-Shafi, Mohammed ibn Idris (769-819 AD).

⁷⁶ The Hanbali School was founded by Imam Ahmad ibn Hanbal (780-855 AD).

⁷⁷ See D Zacharia, 'Fundamentals of the Sunni Schools of Law' (2006) 66 *Heidelberg Journal of International Law* (ZaoRV) 491, 493-506. See also, G Makdisi, 'The Significance of the Sunni Schools of Law in Islamic Religious History' (1979) 10(1) *International Journal of Middle East Studies* 1, 1-8.

⁷⁸ AY Baamir, *Shari'a Law in Commercial and Banking Arbitration: Law and Practice in Saudi Arabia* (2010), 15-16.

⁷⁹ AA Ahdab, *Arbitration with the Arab Countries* (3rd edn, Wolters Kluwer, 2011), 602-605. The Decree issued by King Saud in 1345H or 1926 designated the Hanbali School (under Ibn Hanbal) as the official school for Islamic courts and tribunals in the Kingdom. However, the principle of *stare decisis* is not recognised and judges are required to determine what, in good conscience, best represents the will of God. This implies that judges may adopt the interpretation of another school of thought, where they believe it best represents the will of God. See CP Trumbull, 'Islamic Arbitration: A New Path for Interpreting Islamic Legal Contracts' (2006) 59 *Vanderbilt Law Review* 609, 629-630. See also, FE Vogel, *Islamic Law and Legal Systems: Studies of Saudi Arabia* (Brill, 2000), 142-143.

⁸⁰ For a succinct analysis, see AA Nikulin et al, 'Judicial System of Saudi Arabia and Analysis of Jurisdiction Courts of First Instance' (2017) 13(2) *Revista Publicando* 834, 834-842. See also, SS Solaim, 'Saudi Arabia's Judicial System' (1971) 25(3) *Middle East Journal* 403, 403-407. It must be noted that although the quasi-judicial committees exercise judicial functions, they are mostly part of the executive or administrative branch.

⁸¹ Basic Law of Governance, art 46. The independence of *Shariah* courts was affirmed by Article 26 of the Law of the Judiciary issued by Royal Decree No. M/64 (12/07/1975), stating that these courts have jurisdiction over

disputes brought before them. The courts primarily subscribe to the *Hanbali* school, as indicated above, although the judges are free to consult other schools, wherever an issue is not covered by the accepted *Hanbali* texts.⁸² However, it must be noted that no law governs the exercise of discretion by judges in the *Shariah* courts or Board of Grievances. The contention that they may consult other schools of Islamic jurisprudence where the *Hanbali* texts are silent on an issue is based on the presupposition about discretion in discerning the *Shariah*-compliant course. Hence, if the *Hanbali* is silent on an issue, the *Shariah*-compliant course is that prescribed by other Islamic schools.

2.2.2.1 *Shariah Courts*

Shariah courts were first established in the KSA in 1975⁸³ and the Law of the Judiciary governing these courts was amended in 2007.⁸⁴ These *Shariah* courts comprise the Supreme Court, Court of Appeal, and Courts of First Instance, which include the General Court, Personal Status Court, Family Courts, Commercial Court, and Labour Courts. The hierarchy of these courts is illustrated in Figure 1, below.

all matters except those excluded by law. For an analysis of this law, see AA Al-Ghadyan, 'The Judiciary in Saudi Arabia' (1998) 13(3) *Arab Law Quarterly* 235, 235-236. Regarding the broader question of whether the courts in the KSA may be said to be independent from an objective perspective, see AM Al-Jarbou, 'Judicial Independence: Case Study of Saudi Arabia' (2004) 19(1/4) *Arab Law Quarterly* 5, 5-54.

⁸² MI Al-Mhaidib, 'Arbitration as a Means of Settling Commercial Disputes (National and International) with Special Reference to the Kingdom of Saudi Arabia' (1997) *Edinburgh Research Archive* 1, 14. <<https://www.era.lib.ed.ac.uk/handle/1842/7243>> accessed 14 November 2019.

⁸³ Law of the Judiciary issued by Royal Decree No. M/78 (1/10/2007).

⁸⁴ *Ibid.*

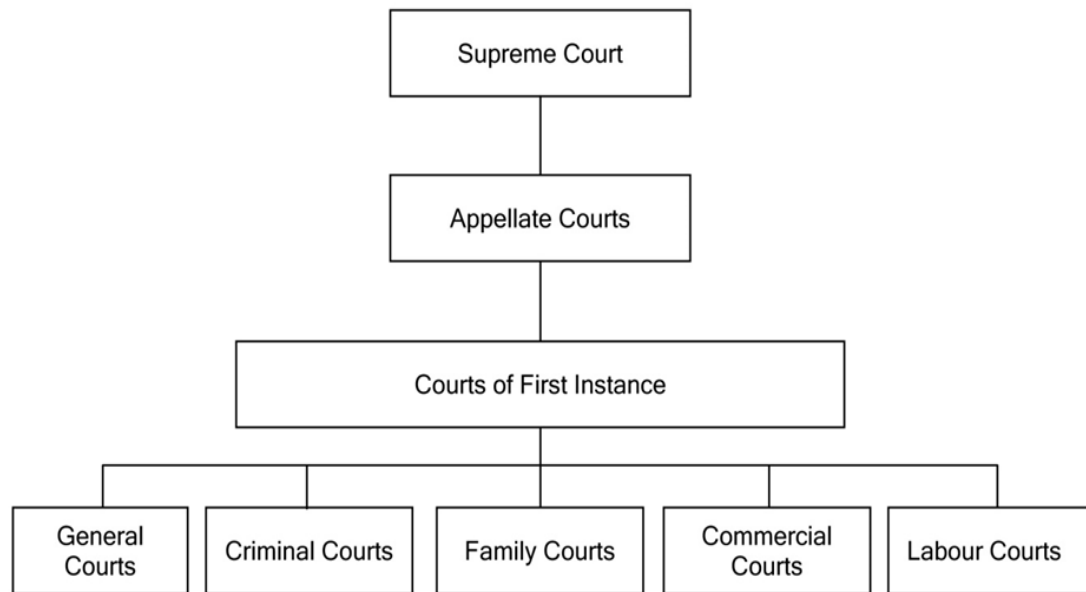


Figure 1: The court hierarchy.⁸⁵

2.2.2.2 Board of Grievances

The Board of Grievances serves as the Saudi administrative court system. It was established in 1982,⁸⁶ and reformed and restructured as part of broad judicial changes that took place in 2007.⁸⁷ It is ‘an independent judicial body reporting directly to the King, and its seat [is] in the City of Riyadh.’⁸⁸ It consists of the Supreme Administrative Court, Administrative Courts of Appeal, and Administrative Courts.⁸⁹ These administrative courts are *al-mazalim* courts or tribunals, which are courts of special jurisdiction that are tasked with resolving disputes concerning specific commercial issues. They may be distinguished from the *Shariah* courts which are *qada* courts, which are courts of general jurisdiction tasked with the administration of ordinary justice.

2.2.2.3 Quasi-judicial Committees

Quasi-judicial committees are administrative committees with the authority to resolve sector-specific disputes. The quasi-judicial committee that is analysed in this thesis is the Insurance Dispute Committee (IDC). Quasi-judicial committees in the KSA are created by an

⁸⁵‘The New Court System in Saudi Arabia’ <<http://www.tamimi.com/en/magazine/law-update/section-8/may-7/the-new-court-system-in-Saudi-arabia.html#sthash.YD5m2RoZ.dpuf>> accessed 14 November 2019.

⁸⁶ Law of the Board of Grievances issued by Royal Decree No. M/51 (10/05/1982).

⁸⁷ Law of the Judiciary (n 27).

⁸⁸ Ibid, Article 1.

⁸⁹ Ibid, Article 8.

empowering Ministerial regulation and they operate under the supervision of the relevant Ministry. Several quasi-judicial committees with limited jurisdiction have been established since 1931. It has been contended that these committees were created to reduce the caseload brought before the courts.⁹⁰ However, Solaim argues that if the motivation for creating committees to adjudicate and address specific issues was simply to ease the burden on existing judges, then more courts would have been created and more judges would have been appointed.⁹¹ Hence, although the committees help to ensure that cases progress in a timely fashion, from the submission of the complaint to disposition, they were also created to address concerns over the refusal of *Shariah* courts to adjudicate certain issues.⁹² The committees are therefore convenient mechanisms for dealing with these concerns.⁹³ Nonetheless, it is noted in Chapters 5 and 6 that although the committees have adjudicated disputes concerning contracts that are not *Shariah*-compliant, neither the CICCL nor the Working Rules direct the committees on how to deal with such contracts. Thus, the panel of adjudicators exercise discretion in determining whether the clauses of the contract are independent of one another to the effect that the unenforceable *Shariah*-compliant clauses may be severed from the rest of the contract. However, the adjudicators have not been helpful in explaining why they recognise and enforce contracts containing clauses that are not *Shariah*-compliant. They do not rely on any established principle of severability.

Unlike the *Shariah* courts, the committees operate under the supervision of the relevant Ministry. Thus, like the Board of Grievances, they are administrative bodies that carry out specific judicial functions. Moreover, they are not independent of the executive, given that they operate in accordance with the directions of the relevant Ministry. In many cases, the Minister may dissolve the committee, or dismiss and replace one or even all its members. Such discretionary authority exercised by the Minister over the committees therefore seriously undermines their independence. It is therefore important that the committees demonstrate that they are not subject to improper influence from the government in order to enhance their reputation for impartiality

⁹⁰ M Faraj, *Towards New Corporate Governance Standards in the Kingdom of Saudi Arabia: Lessons from Delaware* (SABIC, 2014), 40.

⁹¹ Solaim (n 24), 405-406.

⁹² Faraj (n 34), 40.

⁹³ A good example is the validity of conventional insurance contracts. See Amar Aljaser, *Is Islamic Insurance Ready to Take the Lead? - A Case Study of the Saudi Arabian Insurance Law* (Unpublished SJD Dissertation, Georgetown University, 2014), 83-89.

Given that the committees are administrative or quasi-judicial bodies, it is uncertain whether parties who are dissatisfied with their decisions may appeal to the Board of Grievances. This is because the Supreme Administrative Court is one of the institutions comprising the Board of Grievances. However, Article 9 of the Law of the Board of Grievances, issued in 1982, provides that the decisions of the quasi-judicial committees are exempt from review by the Board. Nonetheless, Article 13(b) of the Law of the Judiciary of 2007 provides that the Board has jurisdiction over the decisions of all quasi-judicial committees, except the Committee for the Resolution of Security Disputes, the Banking Dispute Settlement Committee, and the Tariff Committees. Hence, the Board is not banned from reviewing the decisions of the IDC committees. Notwithstanding the above, this is confusing, in light of the fact that the SAMA Appellate Committee is the designated body for receiving appeals from the IDC Primary Committees. The judicial reform of 2007 expanded the jurisdiction of the Board of Grievances to include appeals from all quasi-judicial committees except the three committees named above. However, appeals from the IDC Primary Committees are submitted to the SAMA Appeal Committee, but there is no provision stating that the CICCL overrules Article 13(b) of the Board of Grievances Law 2007. It is due to such confusion that there was a plan in 2005 to abolish all quasi-judicial committees and transfer their powers to special courts within the judicial branch.⁹⁴ However, that plan has not been implemented.

2.2.3 Sources of Law

There are essentially two perspectives from which to understand the KSA's domestic laws. First, there is *Shariah* law, which is the law that applies to all aspects of life in Islamic society. Next, there are the codified laws, created by the legislature and consistent with *Shariah* law.⁹⁵ These are used to regulate all activities within the Kingdom.

⁹⁴ Faraj (n 34), 43.

⁹⁵ As noted above, this system mirrors the conception of natural law as that part of divine law that is knowable by man, while positive law is the particularisation or application of natural law to the varying circumstances of different societies. See NHG Robinson, 'Natural Law, Morality and the Divine Will' (1950) 3(10) *The Philosophical Quarterly* 23, 23-24. Thus, the *Shariah* represents natural law, while legislation and other orders represent positive law. It should be noted here that debate on the link between natural law and the *Shariah* is ongoing, with influential Islamic scholars such as Makdisi and Crone arguing that there is no natural law tradition in Islam. Their arguments are analysed by Emon, who shows that references to nature or rational proof, where these are not based on scripture, do not provide any basis for asserting divine law in the context of Islam: Anver M Emon, 'Natural Law and Natural Rights in Islamic Law' (2005) 20(2) *Journal of Law and Religion* 351, 351-395. See also Emon's philosophical investigation of Islamic natural law and demonstration that where there are competing theologies of the divine, the ontological authority of reason cannot be overlooked: Anver M Emon, *Islamic Natural Law Theories* (Oxford University Press, 2010). As such, it is argued in this thesis that even within Islamic law, not all determinations of the divine find expression in scripture. Hence, there is good reason to associate natural law with Islamic law.

2.2.3.1 *Shariah Law*

As noted above, the KSA is governed by *Shariah* law,⁹⁶ which is primarily based on the *Quran* and *Sunnah*. Hence, all laws and regulations, as well as contracts (including insurance contracts) must comply with the *Shariah*, although there is no clear standard for determining *Shariah*-compliance. The *Quran* is the Holy Book of Islam, revealed to the Prophet Muhammad and representing the word of God. The *Sunnah* comprises the teachings and lessons of the Prophet Muhammad.⁹⁷ The *Quran* provides basic rules of Islamic beliefs and practices, and standards of human conduct. It is not a code that exhaustively covers a system of laws. Most of the verses do not deal with legal matters. Even the *Sunnah* is limited to the Holy Prophet's interpretations of certain verses while acting as mediator and negotiator.

As such, *Shariah* courts have to rely secondary sources that interpret the *Quran* and further interpret the *Sunnah*. These are referred to as *fiqh*.⁹⁸ However, there are different types of *fiqh*, and no consensus on which one takes precedence over the others. They include the *ijma*, representing consensus interpretations from the earliest generation of Islamic scholars; the *qiyas*, consisting of the reasoning of Muslim judges when applying the law, and *fatwa*, consisting of rulings on matters that did not exist in the Prophet's day.⁹⁹ These sources of law must be taken into account and complied with by the legislature, judges and lawyers, when attempting to regulate or enforce activities within Islamic society. With the availability of so many sources, adjudicators have acquired significant discretion in deciding cases. This makes it difficult to predict outcomes given that judges face a number of lawful possibilities. This is problematic, especially in insurance cases. It remains uncertain how adjudicators rely on *Shariah* to interpret the relevant legislation such as the CICCL and the Working Rules.

What is problematic is that, taken as a whole, *Shariah* represents more than just a religion, It is a set of rules and provisions, governing every aspect of Muslim life.¹⁰⁰ This approach is intrinsic to Muslim culture and the need to comply with *Shariah* law is embedded in Muslim

⁹⁶ Shura Council Law, Article 7. Some argue that *Shariah* itself is not a law, but rather the guiding principles that govern the religious, political and economic aspects of Muslim life, and to which all transactions and laws must adhere.

⁹⁷ Ansary (n 1).

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ M Ayub, *Understanding Islamic Finance* (John Wiley & Sons Ltd, 2007), 21; Natalie Schoon, *Islamic Banking and Finance* (Spiramus Press, 2009), 19. Muslims believe that Islam is a 'complete' religion and, as such, it is appropriate for regulating society; Vogel (n 23), 3.

society. In addition to serving as a source of guidance for individuals, its provisions empower the government to regulate society through laws that comply with *Shariah* principles.¹⁰¹ In fact, Muslims are brought up to understand that these rights are inviolable, and that compliance is of the utmost importance,¹⁰² since Muslims believe that Islamic law is living law. The failure to submit to it equates to contradicting God's law, thereby rendering a person a sinner. Muslims maintain that this concerns the whole of everyday life.

2.2.3.2 Saudi Statutes

Saudi adjudicators also rely on written statutes. They create standards that serve as a guide for parties, ensuring that their activities are legal, and for judiciary and executive branches to respectively decide disputes and enforce sanctions in response to non-compliance. It is interesting to note that the Saudi legislature uses the term, *Nizam* meaning 'regulation', to describe its legislative acts, as opposed to *Qanun*, meaning 'law' or 'Act'. The rationale behind this wording is that only God can create laws and as such, the legislature or even the King should not attempt to refer to his enactments as 'laws'.¹⁰³ For the purposes of simplicity in concept and translation, the terms 'law' and 'Act' are interchangeable with the Saudi legislature's term, *Nizam* in this thesis. What is important here is that the rule or regulation is recognised as having the force of the law and may be enforced by the distribution of benefits and burdens, or by the imposition of penalties.¹⁰⁴

There are a number of legal instruments implemented in SA, including:

Royal Decrees, regulations, executive regulations, lists, codes, rules, procedures, international treaties and agreements, ministerial resolutions, ministerial decisions, circular memoranda, explanatory memoranda, documents, and resolutions which have been designated by the government as the official sources of Saudi Arabian Law.¹⁰⁵

¹⁰¹ Vogel (n 23), 3.

¹⁰² MH Kabbani, 'Understanding Islamic Law' (*Islamic Supreme Council of America*, 2017) <<http://www.islamicsupremecouncil.org/understanding-islam/legal-rulings/52-understanding-islamic-law.html>> accessed 14 November 2019.

¹⁰³ M Hanson, 'The Influence of French Law on the Legal Development of Saudi Arabia' (1987) *Arab Law Quarterly* 272, 289.

¹⁰⁴ It follows that in this thesis, Islamic law is essentially studied as a system of positive law. The focus is on positive rules or *Akhaam al-Wad*. See M Fadel, 'Islamic Law and American Law: Between Concordance and Dissonance' (2012-2013) 57 *New York Law School Law Review* 231, 234. However, it is argued here that the jurisdictional rules are based on the idea that Islamic law binds everyone within a given Islamic jurisdiction, rather than every Muslim or everyone who recognises Islamic law as true. This distinction is important, because it supports the contention that Islamic law reflects natural law.

¹⁰⁵ Ansary (n 1).

In addition to these sources of law, the Saudi King has the legislative power to issue Royal Orders. One of the most important of these is the Basic Law of Governance.

2.3.2.1 The Basic Law of Governance

For nearly 60 years from the date of the KSA's unification, the Saudi people lived according to *Shariah* law, without a written constitution.¹⁰⁶ However, on March 1, 1992, King Fahad bin Abdul-Aziz enacted the Basic Law of Governance to delineate the constitutional framework in the KSA.¹⁰⁷ He viewed this as a necessary step towards regulating State authorities, managing the transfer of power between heirs, and protecting fundamental human rights.¹⁰⁸ Before its enactment, there was no centralised means of establishing government powers; rather, they were outlined in diverse instruments, strewn together piecemeal to empower the government to regulate society.¹⁰⁹

The Basic Law consists of 83 Articles, grouped into nine Chapters, which focus primarily on the system of governance, including its structure and powers. Article 1 provides that the KSA is an Islamic state, with its Constitution rooted in the *Quran* and *Sunnah*.¹¹⁰ Article 7 further affirms that the government is to be guided by *Shariah* principles, declaring that the government's authority and the State's administrative regulations are governed by the *Quran* and *Sunnah*.¹¹¹ Furthermore, in Article 23, the Basic Law confirms that it is the State's role to protect the principles of Islam and uphold *Shariah* law.¹¹²

The contents of the Basic Law are quite similar to the constitutions of other nations, given that they establish the basic principles governing behaviour in society and the rights of the people. For example, Article 5 confirms that the KSA is a monarchy,¹¹³ while Article 8 provides that

¹⁰⁶ R Aba-Namay, 'The Recent Constitutional Reforms in Saudi Arabia' (1993) 42 *International Law and Comparative Law Quarterly* 295, 295.

¹⁰⁷ As noted above, although this Law is not referred to as the Kingdom's constitution, it possesses the nature and meaning that are generally attributed to the written constitutions of countries.

¹⁰⁸ Basic Law of Governance.

¹⁰⁹ Aba-Namay (n 50), 295.

¹¹⁰ Basic Law of Governance, Article 1.

¹¹¹ Ibid, Article 7. Given that the Basic Law stresses the importance of *Shariah* law and was written to be compliant with *Shariah* principles, there should be no conflict between it and the *Quran* and *Sunnah*. See F Al-Kahtani, *Current Practices of Saudi Corporate Governance: A Case for Reform* (Unpublished PhD Thesis, Brunel University, 2013), 14-15.

¹¹² This is in line with the law's demand for government in administrative jurisprudence. See E Barendt, 'Separation of Powers and Constitutional Government' (1995) *Public Law* 559, 559-619. See also P Hamburger, *Is Administrative Law Lawful?* (University of Chicago Press, 2014), 5-7, 12-13.

¹¹³ See 'Saudi Arabia: The New Constitution: The Kingdom of Saudi Arabia' (1993) 8(3) *Arab Law Quarterly* 258, 259.

the government must prioritise justice, consultation, and the equality of citizens under *Shariah* law. Article 9 emphasises the importance of maintaining Islamic values and of the basic structure of, and need for, unity within the Saudi family. Articles 37 and 40 recognise the right to privacy in one's home and personal communications, and Article 18 protects private property. Article 23 outlines the KSA's economic principles, including the rights and duties of transacting parties, stressing that it is the State's responsibility to protect human rights in accordance with *Shariah* laws and principles. Finally, Article 16 highlights the sacrosanct nature of public funds, and tasks the Kingdom with safeguarding them.

2.3 The Development of Saudi Insurance Law

As the KSA developed and began to witness economic growth, insurance increasingly became important as insurers helped businesses mitigate risk and provided financial assistance to consumers in times of need.¹¹⁴ The concept of insurance is not new in the KSA, having its roots in early Arabic society.¹¹⁵ In fact, its origins lie in *Aqilah*, referring to a pool of risk and common resources,¹¹⁶ and *Al-Dayyah*, a substitute penalty.¹¹⁷ These concepts were originally founded on the Islamic principles of shared responsibility, social solidarity, and mutual cooperation. The goal of this mechanism was to provide mutual financial security to participants against pre-defined risks.¹¹⁸ This concept of risk-sharing represents an intrinsic feature of all Islamic contracts and modes of financing. Islam favours contracts based on exchange and collective efforts towards the protection against measurable risks in order to mitigate or eliminate the threat they pose to the business enterprise. The entity providing the protection must be paid a charge against revenues. This enables all participants, investors and managers, to share in the cost. Hence, the measurable risk is shared, rather than transferred. On the other hand, the unmeasurable risk or uncertainty cannot be shared. Interest is banned because it enables the

¹¹⁴ SAMA, 'Saudi Insurance Market Report' (SAMA, 2016) <http://www.sama.gov.sa/en-US/Insurance/Publications/KSA%20Market%20Report_2015_English-vf.pdf> accessed 14 November 2019. To illustrate, the Saudi insurance market grew 10.4% in the first quarter of 2016, compared to 2015. This was largely due to the growth of vehicle and health insurance, which comprised 86% of the insurance market.

¹¹⁵ F Manjoo (ed), *Risk Management: A Takaful Perspective* (Ed Alnoor, 2007), 16.

¹¹⁶ AA Alinsaf, 'Saudi Arabia' (1480) 26 *Ministry of Islamic Affairs* 50, 50. The *Aqilah* system may be compared to a pension scheme, whereby employees make monthly contributions to a fund, which then gives them pension payments at the end of their working life. These payments are made throughout the employees' lives and passed on to their dependent successors. This may be distinguished from the commercial insurance system, which is primarily geared towards making profit. In contrast, the *Aqilah* system is set up solely for the benefit of the contributors. See A Khorshid, *Islamic Insurance: A Modern Approach to Islamic Banking* (RoutledgeCurzon, 2004), 58.

¹¹⁷ SA Karim (ed), *The Islamic Moral Economy: A Study of Islamic Money and Financial Instruments* (Brown Walker Press, 2010), 75-76.

¹¹⁸ K Hassan and M Lewis, *Handbook of Islamic Banking* (Edward Elgar Publishing Limited, 2007) 405, 563.

investor to unfairly transfer such risks to the borrower. Islam therefore requires the manager to rely on *Tawakal* (what Allah may grant) beyond what can be protected against (measurable risk) at a fair cost.

The Saudi insurance market has undergone significant changes and is witnessing extensive growth,¹¹⁹ becoming one of the leading insurance markets in the MENA region. It has in fact transitioned from dominance by a single, officially-sanctioned entity to one in which licences can be issued to private insurers; giving rise to a competitive market with over 35 licenced providers.¹²⁰ As a consequence of the liberalisation and privatisation of the sector, there have inevitably been attempts to regulate it. It has been shown that enhancing access to the market through privatisation or liberalisation does not in itself ensure fair competition; regulatory reform built on pro-competitive policies is also needed. Thus, liberalisation and privatisation only improve market performance and competition, if they are accompanied by effective regulation.¹²¹

Nonetheless, historically, there has not been much in the way of insurance sector development and regulation in the KSA. Indeed, Saudi regulators have been under increasing pressure in recent decades to develop and implement managerial, financial and legal instruments, which can adapt to the changing insurance landscape. Regulation has been problematic, because although the Kingdom's insurance sector continues to grow and evolve, many areas of insurance, especially commercial insurance, remain controversial from the Islamic perspective.¹²²

2.3.1 Basic Law of the Insurance Sector

The basic law covering the insurance sector in the KSA is the Cooperative Insurance Companies Control Law (CICCL), which came into force on 20 November 2003. The Implementing Regulations were subsequently published on 23 April 2004.¹²³ Prior to these reforms, however, the Saudi insurance sector was largely unregulated. In 2004, the Saudi

¹¹⁹ The growth rate of the insurance industry in Saudi Arabia was 27% in 2008 and 33.8% in 2009; *ibid* 29.

¹²⁰ *The Report: Saudi Arabia 2008* (Oxford Business Group, 2008), 82.

¹²¹ See S Estrin and A Pelletier, 'Privatization in Developing Countries: What Are the Lessons of Recent Experience?' (2018) 33(1) *The World Bank Research Observer* 65, 69-70. See also W Megginson and J Netter, 'From State to Market: A Survey of Empirical Studies on Privatization' (2001) 39(2) *Journal of Economic Literature* 321, 321-389.

¹²² ZA Ansary, 'An Empirical Analysis of Risk Perception, Remedial Measures and Behaviour of People in Saudi Arabia Towards Insurance' (2000) 6(10) *African Journal of Business Management* 3733, 3733-3744.

¹²³ Cooperative Insurance Companies Control Law, Royal Decree No M/32, July 2003, (2 Jumada II 1424).

government formally ended its monopoly over the insurance industry by inviting companies to register and trade as publicly-listed companies on the Saudi Stock Exchange (*Tadawul*).¹²⁴ The Foreign Investment Act of 2002 allowed companies to have foreign majority ownership and in 2003, insurance was removed from the list of sectors in which foreign entities were prohibited from investing.¹²⁵

CICCL requires that insurance products be purchased within the scope of Islamic finance and its implementing regulations. Thus, the integration of the cooperative insurance model into Saudi law has allowed the market to grow exponentially,¹²⁶ while still maintaining the ethical principles mandated by *Shariah* law. The CICCL places an emphasis on cooperative insurance. This is a form of risk-sharing plan. Similar to *takaful* (Islamic insurance), it incorporates the concepts of mutuality (mutual help, mutual protection and shared responsibility for claims) between policyholders. With the CICCL coming into force, cooperative insurance has likewise been determined to be *Shariah*-compliant. Under this model, policyholders contribute premiums to a shared fund, and the money within that fund is used to cover the claims of any participants in that fund.¹²⁷ This is similar to the cooperative and mutual insurance models used by conventional insurers in Western markets. Therefore, in essence, all *Shariah*-compliant insurance is cooperative, but not all cooperative insurance is *takaful*. The cooperative and mutual insurance models used by conventional insurers in Western markets are not *takaful*, because they involve charging interest and enforcing speculative contracts.

In this regard, scholars have identified a number of ways in which *Shariah*-compliant cooperative insurance differs from *takaful*. First, some measure of capital is occasionally provided by an external shareholder in a cooperative model, as opposed to other members of the community. Second, to the extent that there is an underwriting surplus, it is shared by the shareholders and not returned to the policyholders.¹²⁸ Third, governance of the insurance

¹²⁴ The Law on Supervision of Co-operative Insurance Companies promulgated by Royal Decree M/5 dated 17/5/1405 H (Insurance Law) and the regulations subsequently issued by the Saudi Arabian Monetary Agency (SAMA). See also V Tommy, 'The New Insurance Regulations in Saudi Arabia – Churning Order Out of Chaos' International Takaful Summit London, 2009 <<http://www.Takafulprimer.com/Resources/Insurance%20Regulations%20in%20Saudi%20Arabia%20-%20Chaos%20to%20Order.pdf>> accessed 14 November 2019.

¹²⁵ By 2008, over 20 insurance companies had been licensed. See *The Report: Saudi Arabia 2008* (Oxford Business Group, 2008), 39.

¹²⁶ To illustrate this, the insurance industry witnessed a 19.7% year over year increase in gross written premiums in 2014 and these numbers continue to climb. Aljazira Capital, 'Insurance Sector Report' (August 2016) <http://www.aljaziracapital.com.sa/report_file/ess/SEC-349.pdf> accessed 14 November 2019.

¹²⁷ *The Report: Saudi Arabia 2010* (Oxford Business Group, 2010), 106

¹²⁸ Ibid.

company and its products remains with the shareholders.¹²⁹ Finally, the governing regulations provide little insight into how the term ‘cooperative’ should be defined.¹³⁰ The regulations mention the model of the National Company for Cooperative Insurance, but do not give detailed guidance on how such a model is to be implemented in practice.¹³¹

2.3.2 Obligations of the Parties

The goal of insurance is to bring ‘the insured back to their financial condition prior to the loss.’¹³² Thus, insurance provides financial security against the risk of loss or damage.¹³³ In doing so, it helps alleviate the stress associated with potential risks for individuals and businesses, and gives them some reassurance of safety and economic stability.¹³⁴ This is accomplished by allocating duties and responsibilities to the various parties involved in the creation and regulation of insurance contracts.

2.3.2.1 Policyholders

The most important duty of a policyholder is the duty of good faith to the insurer.¹³⁵ This means that the policyholder must fully disclose all known material facts and matters that could affect either party’s acceptance of the insurance contract, whether or not the insurer requests them.¹³⁶ This obligation exists prior to the signing of an insurance policy and for the duration of the

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Implementing Regulations, Articles 3 and 55.

¹³³ See RH Jerry II, ‘Dispute Resolution, Insurance, and Points of Convergence’ (2015) 2(3) *Journal of Dispute Resolution* 255, 281; HS Denenberg, ‘The Legal Definition of Insurance: Insurance Principles in Practice’ (1963) 30(3) *The Journal of Insurance* 319, 319-320; KS Abraham, ‘Four Conceptions of Insurance’ (2013) 161(3) *University of Pennsylvania Law Review* 653, 655.

¹³⁴ General Secretariat, ‘The Guidelines for Clients of the General Secretariat of the Committees for Resolutions of Insurance Disputes and Violations Q&A’ (IDC, 2015) 3 <<http://www.idc.gov.sa/en-us/Manuals/The%20Guidelines%20For%20Clients%20of%20the%20General%20Secretariat%20of%20the%20Committees%20for%20Resolution%20of%20Insurance%20Disputes%20QA.pdf>> accessed 14 November 2019 [hereinafter, The Guidelines], 4.

¹³⁵ Although there is no case law on good faith, it may be assumed that the content of the concept is the same as that of good faith in English law. Hence, the policyholder is required to refrain from any circumstances that may mislead the underwriter into believing that the circumstances do not exist. This is because the policyholder is the party with knowledge of the circumstances upon which the contingent chance is computed. This information also enables the underwriter to make an informed decision about whether or not to assume the risk and on what terms. See H Bennett, *The Law of Marine Insurance* (2nd edn, Oxford University Press, 2006), para 4.07; J Woloniecki, ‘The Duty of Utmost Good Faith in Insurance Law: Where Is It in the 21st Century’ (2002) 9 *Defence Counsel Journal* 63, 63-64.

¹³⁶ Ibid 5; Implementing Regulation, Article 55(2); Insurance Market Code of Conduct Regulation 2008 (Code of Conduct), Article 42.

policy's effectiveness.¹³⁷ Should an insured party fail to notify the insurer of a material change in his or her circumstances, the policy will be affected, and the insured party will risk losing the protection of the insurance contract. Additionally, policyholders are under an obligation to pay premiums in a timely manner.¹³⁸

Furthermore, if a policyholder wishes to submit a claim, he or she must comply with all the formal requirements for submitting the application and the requested documentation.¹³⁹ The time period for an insurer to settle a claim will not begin until the insurer has received all the required documentation.¹⁴⁰ It is the insured party's responsibility to demonstrate that the claim falls within the scope of the policy and that all contractual conditions have been met. If the insured party fails to comply with these procedural steps, he or she will risk the claim being denied. It is therefore in the best interests of both the insured and the insurer for there to be clear communication and cooperation. Although not specifically mentioned in the laws and regulations, the insured party may also have an implicit duty to mitigate damage and preserve subrogation rights.¹⁴¹

2.3.2.2 Insurers

Similar to policyholders, insurers have a duty of good faith to their customers. The Insurance Market Code of Conduct Regulation, enacted by Decision No. 103/429 dated 8 September 2008 provides that 'Companies must act in an honest, transparent and fair manner, and fulfil all of their obligations to customers, which they have under the laws, regulations, and SAMA guidelines.'¹⁴² The implementing guidelines further elaborate that 'the founders of the Company, and owners of insurance professions shall be of good conduct and reputation with no convictions by court action affecting their honor and integrity.'¹⁴³ Additionally, the

¹³⁷ It may also be contended that the duty of good faith exists at the pre-contractual stage, because the *Shariah* imposes a duty on parties to act in good faith. Then, as a civil law system, Saudi Arabia embraces the duty of good faith in contractual negotiations, which is generally used in civil law systems as a remedy for the wrongful conduct that results from bad faith. See SB Choi et al, 'Towards A Better Understanding of Good Faith Concept in Islamic Contract Law' (2018) 7(4) *International Journal of Engineering and Technology* 247, 247-250. With regard to the Roman law origin of the duty and its use in civil law systems, see JH Botes, *From Good Faith to Utmost Good Faith in Marine Insurance* (Peter Lang, 2006), 18.

¹³⁸ Code of Conduct, Article 42.

¹³⁹ Implementing Regulations, Articles 43 and 44.

¹⁴⁰ *Ibid*, Article 44.

¹⁴¹ This is primarily an equitable right, enabling the insurer to initiate proceedings against a third party, in order to recover payment made to the policyholder, where the latter has suffered loss as a result of the wrongful act of a third party. See DB Burke, *Law of Title Insurance* (3rd edn, Wolters Kluwer, 2018), 8-9; HN Sheldon, *The Law of Subrogation* (John Wilson and Son, 1882), 1-2.

¹⁴² Code of Conduct, Article 11.

¹⁴³ Implementing Regulations, Article 10.

Implementing Regulations require that insurance companies ‘conduct their business according to professional and ethical standards.’¹⁴⁴ To ensure that these professional and ethical standards are met, the company must qualify its employees to undertake duties related to insurance work.¹⁴⁵ When selecting board members and managers, the company has a duty to only engage those who are trustworthy and experienced in financial and insurance business.¹⁴⁶ Furthermore, a company board member is not permitted to sit on the board of another insurance company;¹⁴⁷ this prevents conflicts of interest from arising. Additionally, the company must draft internal policies and procedures to combat economic crime, such as money laundering.¹⁴⁸

In dealing with policyholders, the company is to apply ‘Know Your Customer’ standards.¹⁴⁹ It also has an obligation to communicate all relevant information to a customer that will enable that customer to make an informed and timely decision.¹⁵⁰ When pricing policies for policyholders, the company likewise has a duty to ensure that this pricing is fair, reasonable and adequate;¹⁵¹ aligning with the company’s underwriting guidelines and with appropriate consideration for the risks involved.¹⁵² Additionally, the company must be able to provide SAMA with the basis and justification of its pricing.¹⁵³

For the policies themselves, they need to be drafted so that they are clear and can be readily understood by the public at large.¹⁵⁴ At the very minimum, a policy must also provide the following information: the policy number; the policyholder’s name and mailing address; the period of cover; a description of the cover and limits; deductibles and retentions; endorsements, warranties and riders; conditions and exclusions; insurance rates and premium accounts, and the identification of the property or activities to be insured.¹⁵⁵ The policyholder should also

¹⁴⁴ Ibid, Article 12.

¹⁴⁵ Ibid, Article 77. The Code of Conduct expands on this, providing that ‘it is the duty of each company to keep their, and their employees’ skills and knowledge of the insurance business up-to-date and be informed of the products and services offered by the company... they represent and the intended use of these products and services’; Code of Conduct, Article 12.

¹⁴⁶ Implementing Regulations, Article 28(1).

¹⁴⁷ Ibid, Article 28(2).

¹⁴⁸ Ibid, Article 15(1).

¹⁴⁹ Ibid, Article 15(2). These standards delineate the process by which undertakings verify the identity of customers or clients and assess the potential risks that are inherent in the business relationship. They also enable undertakings to ensure that their agents, consultants or suppliers are compliant. For a thorough analysis, see D Mulligan, ‘Know Your Customer Regulations and the International Banking System: Towards a General Self-Regulatory Regime’ (1998) 22(5) *Fordham International Law Journal* 2324, 2324-2372.

¹⁵⁰ Code of Conduct, Article 15.

¹⁵¹ Implementing Regulations, Article 46(1).

¹⁵² Ibid, Article 46(2).

¹⁵³ Ibid, Article 46(3); Code of Conduct, Article 27.

¹⁵⁴ Implementing Regulations, Article 52; Code of Conduct, Article 16.

¹⁵⁵ Implementing Regulations, Article 52(1)(a)-(i).

have an opportunity to access and review the policy's terms, conditions and exclusions, before it is issued by the insurance company.¹⁵⁶ The company must then provide complete and accurate information to SAMA about its insurance products and services, receiving SAMA's approval for all marketing activities.¹⁵⁷ Moreover, when marketing its insurance policies, the advertising material cannot contain any false, deceptive or misleading representations, or any statements that will defame or cause prejudice to the interests, services or products of others.¹⁵⁸

Once a policy has been issued, it can only be amended at the written request of the policyholder.¹⁵⁹ Furthermore, a company cannot cancel an otherwise valid insurance policy, except under the conditions stated in the policy's cancellation clause.¹⁶⁰ Cancellation terms must be fair and clearly stated in the policy agreement.¹⁶¹ If an insurance company cancels a policy, the policyholder will be entitled to a pro rata refund of the premiums paid, and at least 30 days' notice of the effective date of cancellation.¹⁶² However, a policyholder can cancel a policy at any time, so long as there are no unpaid or outstanding claims.¹⁶³

If an insurance policy is denied, cancelled or not renewed, the insurance company must provide a credible reason for its actions. Therefore, an insurance company may not discriminate or engage in the unfair treatment of policyholders, and cannot base its decisions on the decisions of other companies.¹⁶⁴ In addition, when a policy is about to expire, the company must notify the customer in a timely manner, so that he or she can arrange for a renewal.¹⁶⁵

Once a policy comes into effect, the company has a duty to respond to customer inquiries in a timely manner.¹⁶⁶ Additionally, the company must respond to and resolve claims promptly, notifying the claimant of any missing information within seven days of receiving the

¹⁵⁶ Implementing Regulations, Article 53; Code of Conduct, Article 37.

¹⁵⁷ Implementing Regulations, Article 16.

¹⁵⁸ Implementing Regulations, Article 80; Code of Conduct, Articles 28-29.

¹⁵⁹ Implementing Regulations, Article 53(3); Code of Conduct, Article 23.

¹⁶⁰ Implementing Regulations, Article 54(1); Code of Conduct, Article 57.

¹⁶¹ Code of Conduct, Article 25.

¹⁶² Implementing Regulations, Article 54(1); Code of Conduct, Article 58

¹⁶³ Implementing Regulations, Article 54(2).

¹⁶⁴ Ibid, Article 56; Code of Conduct, Article 13. The Code of Conduct elaborates that 'Companies should not unfairly discriminate between customers; treatment should not differ based on customer (existing or potential) race or gender. Companies must provide credible reason for denying, canceling and not renewing insurance policies'; Code of Conduct, Article 13.

¹⁶⁵ Code of Conduct, Article 59.

¹⁶⁶ Ibid, Article 50.

application.¹⁶⁷ Moreover, claims should be handled fairly, and the company must provide the policyholder with adequate guidance for filing a claim.¹⁶⁸

Where customers have complaints about a company, the company requires a fair, transparent and accessible complaints handling process.¹⁶⁹ Upon receipt of a complaint, the company must acknowledge it, give an estimate of the amount of time needed to resolve it, provide the customer with a follow-up contact, keep the customer updated on the progress of the complaint, address the complaint promptly (within 10 working days), notify the customer as to whether the complaint was accepted or rejected, and explain to the customer the dispute resolution process available under the CICCL.¹⁷⁰

2.3.2.3 Insurance Brokers and Agents

Insurance brokers and agents are required to provide sound advice to a potential insured party.¹⁷¹ They must also disclose all facts and risks associated with the proposed policy.¹⁷² Moreover, in dealing with potential policyholders, there should be no inducement or deception on the part of the insurance agent or broker.¹⁷³ To ensure that the policyholder is informed, the agent or broker must provide the potential insured party with the following: limits of the insurance cover; policy exclusions; premium amounts; policy start and end dates; policy conditions, and the name of the company issuing the insurance policy.¹⁷⁴ Additionally, insurance brokers must refrain from engaging in any business that might create a conflict of interests to the detriment of the policyholder;¹⁷⁵ instead, serving the insured's interests by identifying the most appropriate cover and price available,¹⁷⁶ disclosing the benefits and prices of comparable policies,¹⁷⁷ and disclosing to the insured party any commission or fees earned.¹⁷⁸

¹⁶⁷ Ibid, Article 52.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid, Article 55.

¹⁷⁰ Ibid, Article 56.

¹⁷¹ Implementing Regulations, Article 24.

¹⁷² Ibid.

¹⁷³ Ibid, Article 25.

¹⁷⁴ Ibid, Article 25(a)-(f).

¹⁷⁵ Ibid, Article 26(3)

¹⁷⁶ Ibid, Article 26(4)

¹⁷⁷ Ibid, Article 26(4)

¹⁷⁸ Ibid, Article 26(1).

2.3.2.4 Regulators

Not only does the law impose duties on insurers and policyholders, it also recognises that regulators, by nature of their function and authority, may come into contact with sensitive information. The law specifically addresses this by prohibiting anyone who obtains information related to his or her work in applying the law from disclosing that information or benefitting from it in any way.¹⁷⁹

2.4 Regulation of the Insurance Sector

The regulation of the insurance sector is of the utmost importance in ensuring that it remains economically stable and efficient in serving policyholders.¹⁸⁰ The International Cooperative and Mutual Insurance Federation (ICMIF) states in its manifesto for cooperative and mutual insurance that '[d]omestic legislation and regulation everywhere can and must be brought up to the highest standards that exist in some countries to ensure that the existing and potential mutual and cooperative insurance customers are not disadvantaged.'¹⁸¹ In response to insurance market growth in the KSA, the General Secretariat has noted that the 'insurance services sector in the Kingdom has witnessed a remarkable boom in the regulatory and supervisory aspects and practice at both the individual and institutional levels.'¹⁸²

The Kingdom's insurance market is broadly governed by CICCL, as mentioned above. In addition to the CICCL, the regulatory framework is composed of the Implementing Regulations, Code of Conduct Regulations, Risk Management Regulation (2008), Regulation of Reinsurance Activities (2010), Insurance Intermediaries Regulation (2011), Investment Regulations (2012), Outsourcing Regulation for Insurance and Reinsurance Companies and Insurance Service Providers (2012), Surplus Distribution Policy (2015), Insurance Corporate Governance Regulations (2015), Audit Committee Regulation in Insurance and/or Reinsurance Companies (2015), and Actuarial Work Regulation for Insurance and/or Reinsurance Companies (2016). In addition to these primary sources of regulation, SAMA publishes

¹⁷⁹ CICCL, Article 12; Implementing Regulations, Article 35.

¹⁸⁰ See RW Klein, 'Principles of Insurance Regulation: An Evaluation of Current Practices and Potential Reforms' (2012) 37(1) *The Geneva Papers on Risk and Insurance – Issues and Practice* 175, 175-199; HD Skipper and RW Klein, 'Insurance Regulation in the Public Interest: The Path Towards Solvent, Competitive Markets' (2000) 25(4) *The Geneva Papers on Risk and Insurance – Issues and Practice* 482, 482-504.

¹⁸¹ ICMIF, 'Protecting Lives and Livelihoods' (2015) The ICMIF Global Manifesto <<http://www.mutuo.coop/wp-content/uploads/2015/10/ICMIF-Mutual-Manifesto-first-edition.pdf>> accessed 14 November 2019.

¹⁸² Ibid, 4.

circulars to clarify how the applicable insurance law and regulations function.¹⁸³ This thesis focuses primarily on the CICCL, its Implementing Regulations, and the Working Rules of the IDCs.

2.4.1 The Authority Responsible for Regulating and Supervising Insurance Activities

The legislative framework for insurance has empowered SAMA to regulate the insurance sector and oversee the insurance dispute resolution process.¹⁸⁴ SAMA was established in 1952 as the Kingdom's Central Bank; through legislative Decrees, it has been vested with powers to regulate a variety of financial sectors.¹⁸⁵ In addition to insurance regulation, SAMA has the authority to supervise commercial banks, exchange dealers, finance companies, and credit information companies.¹⁸⁶ In its regulatory capacity, it is empowered to issue implementing regulations for the laws or Decrees through which it is vested with powers. In the insurance context, SAMA is the party responsible for granting companies permission to operate as insurers within the State; approving the insurance products made available to consumers, and reviewing and approving consumer insurance contracts.¹⁸⁷ Furthermore, SAMA has the ability to constitute dispute resolution mechanisms, to the extent that is contemplated by the empowering legislation. In the insurance context, this includes the creation of IDCs, pursuant to the CICCL.¹⁸⁸

Article 2 of the CICCL explicitly empowers SAMA to regulate the insurance industry.¹⁸⁹ SAMA therefore has the authority to review all applications to form insurance and reinsurance companies, and to ensure that they satisfy the applicable rules and conditions for operating in the Kingdom.¹⁹⁰ Aside from this, SAMA has supervisory and technical control over all insurance activities within the Kingdom, and is vested with the following delineated powers:

¹⁸³ W Hachem, S Wakerly, T Janfada and T Neighbor, 'Insurance and Reinsurance in Saudi Arabia: Overview' (Thomson Reuters, 2016) <[https://uk.practicallaw.thomsonreuters.com/3-577-5486?__lrTS=20170421000730194&transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/3-577-5486?__lrTS=20170421000730194&transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)> accessed 14 November 2019.

¹⁸⁴ CICCL, Articles 1 and 20.

¹⁸⁵ SAMA, 'SAMA Functions' (2017) <<http://www.sama.gov.sa/en-US/About/Pages/SAMAFUNCTION.aspx>> accessed 14 November 2019.

¹⁸⁶ Ibid.

¹⁸⁷ Hachem et al (n 127).

¹⁸⁸ CICCL, Article 20.

¹⁸⁹ CICCL, Article 2. It should be noted that health insurance is regulated separately by the Council of Cooperative Health Insurance.

¹⁹⁰ Ibid, Article 2(1). Upon approval by SAMA, an application is then referred to the Ministry of Commerce and Industry for the official legal action required to establish the company.

regulating and approving rules for investing premiums; designing the formula for distributing surplus; determining the amount that must be deposited with a local bank by the insurance company; approving standard forms of policy; determining the necessary minimum amount of third party insurance coverage; creating rules and restrictions on methods of investing insurance company assets; setting general rules governing which assets must be kept in Saudi Arabia and which assets may be held outside; determining the minimum and maximum amounts of each type of insurance, along with conditions, the amounts payable as membership fees, and the insurance premium amounts against the company's capital and reserves, and creating rules and regulations to protect beneficiaries and ensure that insurance companies satisfy their claims and obligations.¹⁹¹

In carrying out its regulatory functions, SAMA has explicit authority to conduct an on-site inspection of an insurance company's records and accounts.¹⁹² The company's employees must consequently cooperate by disclosing any relevant information within the scope of their authority or possession.¹⁹³ Additionally, SAMA has the power to request that an insurance company submit any information deemed by SAMA to be necessary for achieving the CICCL's objectives.¹⁹⁴

To the extent that SAMA identifies any violations of the law or its regulations, it is empowered to perform a variety of actions.¹⁹⁵ First, it may appoint one or more consultants to provide consultation to the company over the management of its activities in attempting to cure the issue.¹⁹⁶ Second, SAMA may suspend any company board member or employee who is proven to be responsible for a violation.¹⁹⁷ Third, SAMA can restrict or prevent a company from accepting new shareholders, investors, or members in any of its insurance activities.¹⁹⁸ Fourth, SAMA has the broad authority to compel a company to take any other measures that it deems necessary for resolving a violation.¹⁹⁹ Finally, if all the above measures fail to resolve a violation, or if a company continues to violate provisions of the law, SAMA may request that

¹⁹¹ Ibid, Article 2.

¹⁹² Ibid, Article 8; Implementing Regulations, Article 30.

¹⁹³ CICCL, Article 8; Implementing Regulations, Article 31.

¹⁹⁴ Ibid, Article 11. The information that SAMA can request includes statements of returns and expenses of each insurance type; detailed statements of the company's insurance activities for a stated period; statistical statements and general information about the company's activities; statements of the company's investments, and any other information that it deems appropriate to request; *ibid*.

¹⁹⁵ CICCL, Article 19; Implementing Regulations, Article 5.

¹⁹⁶ CICCL, Article 19(1).

¹⁹⁷ Ibid, Article 19(2).

¹⁹⁸ Ibid, Article 19(3)

¹⁹⁹ Ibid, Article 19(4).

the company be dissolved.²⁰⁰ In addition, SAMA has the authority to condemn violations of the law with a fine of up to one million Saudi riyals and a maximum of four years in prison.²⁰¹ Thus, SAMA may impose an imprisonment sentence as a last resort.

2.4.2 Understanding the Insurance Claim Process

It should be noted that insurance contracts, whether compliant or non-compliant with *Shariah*, are generally sequential and contingent. They are sequential because the third-party can claim compensation from the policyholder and the latter's insurer. They are contingent because performance by one of the parties (in this case, the insurer) is based on specific events or conditions occurring. Hence, although the consumer performs on a regular basis by paying the required premiums, the insurer only performs by paying the consumer's claim when a covered loss occurs. Previous studies have demonstrated that the weaker parties in sequential and contingent contracts, usually the policyholders, can best protect their interests by clearly specifying the conditions upon which the stronger parties' performance is due.²⁰² However, within the insurance context, the weaker or vulnerable parties can hardly depend on the contract for such protection, because insurers often include abstract or ambiguous language, leaving them with broad contractual discretion.²⁰³ Such contracts may give consumers the illusion of coverage or confer unconscionable advantages on the insurers. Hence, with significant discretion, insurers may readily engage in systematic efforts to wrongly deny consumers payment of their claims, in order to increase their profit margins. A good example is where a motor vehicle policy purchased by an elderly person contains an exclusion clause that removes coverage for injuries to members of the policyholder's family. The exclusion clause makes coverage illusory if the elderly policyholder cannot drive and only his children and grandchildren drive the vehicle.²⁰⁴

²⁰⁰ Ibid, Article 19.

²⁰¹ Ibid, Article 21.

²⁰² See RJ Gilson, CF Sabel and RE Scott, 'Text and Context: Contract Interpretation as Contract Design' (2014) 100(1) *Cornell Law Review* 23, 76-86; KE Spier and JJ Prescott, 'Contracting on Litigation' (2016) Harvard Law School Discussion Paper No. 874 1, 1-5; Sykes AO, 'Bad Faith' Breach of Contract by First-Party Insurers' (1996) 25(2) *Legal Studies* 405, 424-425.

²⁰³ See R. Works, 'Excusing Non-occurrence of Insurance Policy Conditions in Order to Avoid Disproportionate Forfeiture: Claims-made Formats as a Test Case' (1998) 5(2) *Connecticut Insurance Law Journal* 506, 513-516. This problem is discussed in section 2.5.2.1, below.

²⁰⁴ Many examples are discussed in I Weiss, 'The Illusory Coverage Doctrine: A Critical Review' (2018) 166 *University of California Law Review* 1545, 1548, 1562-1563.

The IDC may therefore be deemed to be a better dispute resolution forum than litigation, or other forms of ADR, where it is shown that they provide consumers with the most effective avenue for challenging such determinations by insurers. Nevertheless, to understand how disputes arise, and how the IDC resolves them, it is important to first understand the stages of the claim process.

2.4.2.1 Pre-Contract Stage

The pre-contract stage refers to all activities that occur prior to the signing of an insurance contract. The first step in the pre-contractual stage is the potential policyholder's search for an appropriate insurance policy.²⁰⁵ A prospective subscriber may first learn of a type of policy through an insurer's advertising, or through an insurance broker. The prospective subscriber will then need to identify what type of risk they wish to be insured against, and the required cover and potential obligations of the policy.²⁰⁶ Once the individual has selected an appropriate policy, he or she will be provided with the relevant policy information and the terms and conditions for review, prior to purchasing the cover.²⁰⁷ This is the individual's opportunity to read and understand all the policy's terms, conditions, cover and exclusions. The goal of this review is to bridge the gap between policyholder expectations and the realities of the contract, thus avoiding disputes further down the road.²⁰⁸ Finally, after thoroughly reviewing the policy, the subscriber must disclose any material facts to the insurer that could affect the policy, prior to signing the contract.²⁰⁹

The Insurance Market Code of Conduct Regulations (enacted by Decision No. 103/429 of 8 September 2008) imposes the duty of disclosure on the insurance company and policyholder or insured party. As such, Article 3 of this Code sets a materiality test in the form of disclosing all information that 'a reasonable person would regard [as] relevant.' The failure of the insurance company to disclose all material information in the pre-contract stage will ensure that the consumer can successfully challenge the insurance company's adverse determination in the claim and dispute stages of the process.

²⁰⁵ The Guidelines (n 78) 14.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ibid, 14-15.

²⁰⁹ Ibid, 15.

2.4.2.2 Post-Contract Stage

Once the contract has been signed by the parties, it enters into full force. During this post-contract stage, it is important that both parties comply with the terms and conditions of the policy.²¹⁰ For the insured party, this means complying with all requirements and stipulations of the cover.²¹¹ The insurer must also uphold its obligations, such as processing claims in a timely manner and responding promptly to customer inquiries. Additionally, during the post-contract stage, it is essential that the insured party discloses any material changes in circumstances that could affect the cover.²¹² If the insured party fails to do so, the risk that a loss might not be covered by the insurer will increase.

2.4.2.3 Claim Stage

The claim stage refers to the point at which a policyholder files a claim with the insurer for cover under the insurance policy. Pursuant to the Implementing Regulations, an insurance company is required to set up a specific claims department to accept, evaluate and process claims.²¹³ For a claim record to be created, the insurance company must compile the following information: an insurance adjuster's report and any other documents relating to the claim, and the reason for the covered loss; information about any indemnity from another insurance policy; the actions taken by the company and the status of the claim; a power of attorney form, and a copy of the signed settlement agreement, once the claim is settled.²¹⁴ The company has 15 days to settle the claim, as from the date on which the individual policyholder files the claim with all the necessary documents. This timeframe is extended to 45 days for claims from commercial entities.²¹⁵

2.4.2.4 Dispute Stage

Lastly, the dispute stage occurs when there is a disagreement between the insurer and an insured party over a policy and the insurer's determination regarding the insured party's claim.²¹⁶ The most common type of dispute involves an insurer's failure to cover a claim, which the insured

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid, 16.

²¹³ Implementing Regulations, Article 43.

²¹⁴ Ibid.

²¹⁵ Ibid, Articles 44 and 45.

²¹⁶ The Guidelines (n 78) 18.

party believes should be paid out under the policy. To engage the dispute resolution process, the insured party must file all documents related to the claim and its denial, in order to initiate the IDC proceedings.²¹⁷

Given that the IDC represents an interest-based process,²¹⁸ as shown above, it may be assumed that the CICCL, Implementing Regulations, and Insurance Market Code of Conduct Regulations seek to balance the interests of policyholders and insurers, or at least to redress the balance.²¹⁹ Nonetheless, it could be argued that these instruments are weighted in favour of the policyholder rather than the insurer, because the policyholder's economic, social and relational interests are taken into account, while less emphasis is placed on the insurer's economic and relational interests. The policyholder is therefore only required to make a fair presentation of the material circumstances impacting on the judgement of a prudent insurer, in deciding whether to cover the risk and on what terms.²²⁰ The policyholder's performance of the duty in good faith eliminates the incidence of insurance fraud.²²¹ On the hand, the insurer has an obligation to communicate all relevant information to the potential policyholder, so as to enable him or her to make an informed and timely decision.

In addition, the insurer must ensure that the policies are drafted clearly and can be readily understood by the public at large.²²² Moreover, when marketing its insurance policies, the insurer must ensure that the advertising material does not contain any false, deceptive or misleading representations, or any statements that will defame or cause prejudice to the interests, services or products of others. Lastly, where policyholders have complaints about an insurer, the latter must conduct a fair, transparent and accessible process for handling complaints.

²¹⁷ Ibid.

²¹⁸ See section 2.5.1.1 below for an explanation of the interest-based process.

²¹⁹ Balancing the interests of parties was one of the main aims of the reform in the UK, resulting in the enactment of the Insurance Act 2015. See this specific aim discussed in: Law Commission, *Insurance Contract Law: Business Disclosure; Warranties; Insurer's Remedies for Fraudulent Claims, and Late Payment* (Law Com No 353, HMSO 2014), para 1.6. See also generally, AF Lowenfeld, 'Conflict, Balancing of Interests, and the Exercise of Jurisdiction to Prescribe: Reflections on the Insurance Antitrust Case' (1995) 89(1) *American Journal of International Law* 42, 42-53.

²²⁰ See Article 42 of the Code of Conduct. This is the duty to act in good faith, which, as noted above, is already imposed by the *Shariah* on all contractual parties. It has however been argued that the duty of fair presentation is separate from the duty of good faith. See R Merton, *Colinvaux's Law of Insurance* (11th edn, Sweet and Maxwell, 2017) 6-006.

²²¹ Also, Article 13 of the Anti-Forgery Law imposes hefty sentences for insurance fraud. These include imprisonment from 1 to 5 years and a fine of 400,000 Saudi riyals.

²²² See Article 37 of the Code of Conduct.

As such, Saudi laws and regulations seem to be largely weighted in favour of the policyholder, for the purposes of protecting the public at large and ensuring that prejudice is not caused to public interests. Hence, they enable insurance to assist groups who are often unrepresented or marginalised in society, such as consumers or employees. It may then be contended that insurance law in the KSA is essentially public interest law.²²³ This justifies providing disputants with a single process (the IDC) rather than multiple process options, including other mechanisms that the insurer may use to undermine the interests of policyholders and the public. However, the contention that insurance law in the KSA is public interest law raises two concerns. The first of these concerns whether the State may be entitled to impose duties on insurers to ensure that private insurance coverage is always consistent with public interests. The second question enquires whether a law weighted in favour of consumers may be said to be a public interest law, where the interests of those consumers are represented and dictated by government policy.

The answer to the first question requires determining whether the imposition of public interest duties on insurers (who are private parties) is a workable social arrangement in the KSA. To clarify this further, it must be demonstrated that this is the best way of helping consumers (or marginalised groups) to access justice. With regard to the second question, it is important to emphasise that consumers do not form a homogenous group with common interests, but usually have competing interests.²²⁴ Hence, insurance law is public interest law, if it focuses on marginalised consumer groups and enables them to access justice at little or no cost.²²⁵ In this light, the laws and regulations in the KSA have imposed on insurers an obligation to ensure fair process by providing policyholders with the right to challenge insurers' adverse coverage determinations and by compelling both parties to use a specific dispute resolution forum, namely the IDC. This forum is briefly assessed below, in order to ascertain whether it is justified to compel its use. The forum is also critically examined in Chapters 3 and 4, in order to determine whether it is the best avenue for providing consumers with a fair process. The next section gives a brief overview of what it entails.

²²³ Public interest law in this context may be defined as the law that seeks to protect the traditionally unrepresented interests of marginalised groups and to promote the collective good. See SL Cummings, 'The Future of Public Interest Law' (2011) 33 *University of Arkansas Little Rock Law Review* 355, 367; RL Rabin, 'Abandoning Our Illusions: An Evaluation of Alternative Approaches to Law Reform' (1974) 27 *Stanford Law Review* 191, 199-200.

²²⁴ See S Weatherill, *EU Consumer Law and Policy* (2nd edn, Edward Elgar, 2013), 36.

²²⁵ This conception of insurance law as public interest law is developed in S Tales, 'Insurance Law as Public Interest Law' (2012) 2 *UC Irvine Law Review* 985, 993-1009.

2.5 Dispute Resolution under the Cooperative Insurance Companies Control Law (CICCL)

In addressing insurance disputes, Article 20 of the CICCL provides for the creation of administrative tribunals or committees to hear and decide disputes between insurers and their policyholders, or between insurers and other companies.²²⁶ Specifically, the law provides that:

One or more committees shall be formed... composed of three specialized members, at least one of whom shall be a legal counsellor, to be entrusted with the settlement of disputes occurring between insurance companies and their clients, or between these companies and others that may substitute for the insured...²²⁷

The establishment of these administrative tribunals or committees, and the rules governing their activities, are set out in the Approval of the Working Rules and Procedures of the Insurance Disputes and Violations Settlement Committees.²²⁸ These Committees are fully independent and do not fall under the jurisdiction of SAMA or any other authority.²²⁹ They include the Primary Committees in three major cities: Riyadh, Dammam and Jeddah, and an Appeal Committee within SAMA. Compulsory mediation, which is required before disputes are submitted to the relevant Committee, is coordinated by the General Secretariat.²³⁰

The Primary Committees are formed by Ministerial Resolution and have an initial tenure of three years, which can be renewed by the Minister.²³¹ The authority of the Primary Committees is derived from Article 20 of the CICCL which provides for specialised committees to settle insurance disputes and violations of the provisions of the CICCL.²³²

The SAMA Appeal Committee is also appointed for a period of three years, subject to renewal, but formed by Royal Order.²³³ It was set up under Article 22 of the CICCL and specialises in handling complaints filed by persons who are unhappy with the decisions of the Primary Committees and therefore seek to have them reversed.²³⁴ The Primary Committees and SAMA

²²⁶ CICCL, Article 20

²²⁷ The Guidelines (n 78) 18.

²²⁸ Approval of the Working Rules and Procedures of the Insurance Disputes and Violations Settlement Committees, Resolution No 190 dated 9/5/1435H.

²²⁹ The Guidelines (n 78) 18.

²³⁰ Ibid.

²³¹ Ibid.

²³² Working Rules, Article 1. As noted above, the fact that they are created by Ministerial Resolution and form part of the executive (administrative) branch, rather than the judicial branch, undermines their independence.

²³³ The Guidelines (n 78) 3.

²³⁴ Working Rules, Article 1.

Appeal Committee, formed under the authority of the CICCL, are excluded from section 3 of the Executive Work Mechanism Law of the Judiciary and Law of the Board of Grievances.²³⁵

While the Committees are ultimately responsible for hearing and deciding insurance disputes, the General Secretariat also plays a supporting role by handling the administrative, regulatory and technical tasks associated with managing disputes and violations brought before the Committees.²³⁶ For example, the General Secretariat receives dispute and appeal requests to be considered by the Committees; ensures that all documents for registering a dispute are completed; communicates with the parties to ensure that the paperwork is completed and that the supporting documents are obtained; reviews the requests and defences contained in the proceedings, and prepares legal and technical opinions for the Committees; sets the schedules for hearings; performs secretarial functions for the Committees, and drafts and distributes decisions to the parties.²³⁷

Several types of natural and artificial person can file an insurance dispute before a Primary Committee, assuming that they have the requisite capacity and interest in the case.²³⁸ These include insurance and reinsurance companies, policyholders (insured clients), insurance companies in the capacity of an insured party, insurance service providers, and any other relevant party that may be a beneficiary of the insurance cover with a legitimate interest in the case.²³⁹ It follows that the Committees were not created to cater specifically for consumers, but first and foremost, they are required to adjudicate and address specific issues to ease the burden on the courts, and also to help ensure that cases progress in a timely fashion, as well as dealing with certain issues that the *Shariah* courts or the Board of Grievances have been reluctant to adjudicate.²⁴⁰ However, there is no information on the issues that *Shariah* courts have been reluctant to adjudicate which are now within the IDC's jurisdiction. Concerning the Board of Grievances, it is shown in Chapters 3, 5 and 6 that the Board was reluctant to recognise and enforce insurance contracts that did not comply with the *Shariah* in part or in whole. It is also

²³⁵ The Guidelines (n 78) 3. This may be interpreted as filling a loophole in Article 13(b) of the Law of the Judiciary of 2007, with regard to the power of the Board of Grievances to review decisions of the IDCs. As noted above, IDCs are not among the committees that are exempt from the Board's appellate jurisdiction under the Law of the Board of Grievance.

²³⁶ Ibid, 2.

²³⁷ Ibid; Working Rules, Article 13.

²³⁸ The Guidelines (n 78) 4.

²³⁹ Ibid.

²⁴⁰ See Faraj (n 34) 40.

shown that the IDC committees exercise discretion in severing the *Shariah*-noncompliant clauses from contracts.

By conferring the power to set up dispute resolution mechanisms on SAMA, the drafters of the CICCL contended that the use of litigation or courts as the main form of insurance dispute resolution would not only diminish but cease altogether. The historically narrow limitation to litigation, appeals, and rights-based processes within the judicial system was problematic, because, as mentioned above, the Board of Grievances often declined to recognise and enforce conventional insurance contracts.²⁴¹ Nonetheless, the CICCL did not simply create an alternative dispute resolution system to litigation; it replaced litigation as the official insurance dispute resolution system, compelling all parties to use this new system. Hence, all insurance-related disputes must be submitted to an IDC.

2.5.1 Assessing the Quality of the IDC

2.5.1.1 Dispute System Design

Towards the end of the last century, Ury et al. developed the concept of dispute system design;²⁴² emphasising the importance of interests-based procedures for the resolution of disputes related to a specific industry. They noted that the system offered one or several formal processes, which may have been created over the course of the industry's history or at a single point in time.²⁴³ However, disputes ought to be resolved according to the parties' interests, rights, and power. Interests-based processes emphasise the parties' economic, social and relational values, and involve direct negotiations by the parties, with the assistance of a third party. Ury et al. also state that these processes require a significant time investment, but often yield the highest satisfaction with outcomes.²⁴⁴ Pertinent examples would include the use of an ombudsman or mediation. It follows that the IDC may be described as an interest-based process option, given that it involves the use of mediation and an administrative adjudicating organ,

²⁴¹ Some decisions of the Board of Grievances to this effect are discussed in Chapters 3, 5 and 6.

²⁴² See W Ury, JM Brett and SB Goldberg, *Getting Disputes Resolved: Designing Systems to Cut the Cost of Conflict* (Jossey-Bass, 1988) 3-9.

²⁴³ The systems may also be organisational, given that the organisation in this context functions in the same way as an industry. It has also been pointed out the systems may include informal rules that were not explicitly designed. See M Rowe, 'People Who Feel Harassed Need a Complaint System with Both Formal and Informal Options' (1990) 6 *Negotiation Journal* 161, 172.

²⁴⁴ Ury et al (n 186) 14.

which is akin to an ombudsman. Hence, the Saudi legislator may have chosen this option, because it often produces the highest satisfaction with outcomes.²⁴⁵

Conversely, rights-based processes require the parties to agree upon the procedural rules and use of a neutral third party, who will then enforce the rules and determine the prevailing party. The examples provided by Ury et al. include binding arbitration and litigation, based on an agreement between parties.²⁴⁶ The authors note that such processes provide limited remedies and will not address all the interests that are valued by parties.²⁴⁷

Lastly, power-based processes involve the weighting of the outcome in favour of the party with the most resources, leverage or status. Ury et al. comment that these processes do not vindicate rights or address the wide array of parties' interests. Moreover, they are often costly in terms of relationships. Examples of this include the management responding to a strike with a lockout or the use of coercion by the government to compel compliance with a law.²⁴⁸

Subsequent researchers have identified more options for policy makers within the processes analysed by Ury et al. These options provide parties with varying levels of control over the process and outcome.²⁴⁹ Nonetheless, the objectives of these processes remains the same: minimise transaction costs, enhance relationships between parties, improve the efficiency and effectiveness of the dispute resolution mechanism, and increase satisfaction with the process and outcome.²⁵⁰ The above-mentioned researchers therefore claim that the best systems for achieving these objectives display the following characteristics:

- Parties are provided with multiple process options, which include both interests-based and rights-based processes.

²⁴⁵ Chapter 5 analyses the statistical data published by the General Secretariat on the level of satisfaction amongst IDC users. The data show that most IDC users are very satisfied with the process and outcomes.

²⁴⁶ Ury et al (n 186) 14.

²⁴⁷ It is shown in Chapter 3 that litigation is not an effective resolution option for insurance-related disputes, because it provides limited access to remedies, and does not take into account the interests of low-income consumers. However, Chapter 4 reveals that arbitration is an effective resolution option, but its main drawbacks are high transaction costs and time constraints.

²⁴⁸ Ury et al (n 186) 14.

²⁴⁹ These options include other forms of ADR, such as negotiation, conciliation, non-binding arbitration, and mediation by the courts. As they become more formal, the control exercised by the neutral third party increases, while the process becomes more expensive in terms of resources and time. Moreover, the focus shifts from addressing the interests of the parties to addressing their rights. See C Constantino and CS Merchant, *Designing Management Systems: A Guide to Creating Productive and Healthy Organizations* (Jossey-Bass, 1996), 168-169; MP Rowe, 'The ombudsman's Role in a Dispute Resolution System' (1991) 7(4) *Negotiation Journal* 353, 354-355; S Smith and J Martine, 'An Analytic Framework for Dispute System Design' (2009) 14(1) *Harvard Negotiation Law Review* 123, 126-129.

²⁵⁰ Constantino and Merchant, *ibid*, 168-169.

- Parties can ‘loop back’ and ‘loop forward’ between interests-based and rights-based processes.
- All key players in the industry and wider community are involved in the system’s design.
- Participation in the system is confidential and voluntary.
- Impartial third-party neutrals serve as adjudicators.
- All the stakeholders are educated in the use of the multiple process options.

The above factors may be applied to assess the quality of the IDC, as well as the rationale for compelling disputants in the KSA to use this mechanism. This assessment takes place in the next section.

2.5.1.2 The IDC Process

The administrative tribunals or committees that comprise an IDC are competent to hear all disputes related to insurance policies; including disputes between insurers and policyholders, and between insurers and other companies; disputes between insurance and reinsurance companies; alleged violations of the supervisory and regulatory instructions for insurance and reinsurance companies; insurance service provider violations, and violations arising from the implementation of the CICCL, as well as any applicable fines.²⁵¹ These disputes are best classified under two main categories: disputes arising directly from insurance policies, and insurance-related disputes and violations.²⁵²

Disputes arising directly from insurance policies are those that result from the actual agreement signed by the contracting parties.²⁵³ If a dispute is filed against an insurance company, jurisdiction over the dispute is based on the complainant’s place of residence. Similarly, if an insurance company files a dispute, jurisdiction is based on the defendant’s place of residence.²⁵⁴ Conversely, insurance-related disputes and violations are those arising between players in the insurance industry itself, such as insurance and reinsurance companies.²⁵⁵ These disputes are typically heard within the jurisdiction of the defendant’s residence or head office.²⁵⁶ For either

²⁵¹ Ibid, 1-2. Any lawsuit based on an insurance-related dispute or violation must be filed with the primary committee. Working Rules, Article 2.

²⁵² The Guidelines (n 78) 4-5.

²⁵³ Ibid, 4.

²⁵⁴ Ibid; Working Rules, Article 6(1).

²⁵⁵ Ibid.

²⁵⁶ The Guidelines (n 78) 5.

type of dispute, the General Secretariat will coordinate mediation and then refer the dispute to the nearest Committee for resolution, if mediation fails.²⁵⁷

In terms of procedural governance, the Committees are guided by the Working Rules. Where the Working Rules do not contain an applicable provision, the Committees are guided by the Law of Procedure before the *Shariah* Courts, as well as its implementing regulations.²⁵⁸ Additionally, the Committees are bound by the regulatory standards and controls of general litigation, which provide that they can only accept cases that fall within their jurisdiction and relate to a claim that they are competent to hear.²⁵⁹

In hearing a dispute, the Committees are granted significantly more leeway than *Shariah* or civil courts. For example, they can accept all types of evidence related to a dispute, including electronic and computer data, telephone recordings, faxes, emails and SMS messages.²⁶⁰ The Committees are also able to conduct hearings that allow the parties to present their case and explain their arguments.²⁶¹ Additionally, unlike civil cases, where there is very little in the way of applicable case precedent, the Committees are permitted to adopt an approach more akin to the common law. In deciding a dispute, the Working Rules provide as follows:

[L]awsuits shall be considered in the light of presented written requests, defenses or whatever is raised during the proceedings. They shall be decided on in accordance with the laws and regulations regulating the nature of the dispute, the applicable rules and rulings reached at by the judiciary and the comparative jurisprudence for settling insurance disputes and violations.²⁶²

This broadening of precedential scope allows the Committees to draw upon reasoning from domestic cases, as well as upon approaches to similar disputes in other jurisdictions.²⁶³ Finally, the Committees may also settle litigants' claims for legal fees related to a lawsuit.²⁶⁴

The Committees set a maximum time of five years from the due date of the claimed amount within which proceedings must be initiated.²⁶⁵ Assuming a timely dispute is brought before a

²⁵⁷ Ibid.

²⁵⁸ Working Rules, Article 12. This is discussed further in Chapter 3.

²⁵⁹ The Guidelines (n 78) 6.

²⁶⁰ Working Rules, Article 7.

²⁶¹ Working Rules, Article 4; M Beswetherick and S Alsaab, 'The New SAMA Insurance Dispute Committee Rules in the Kingdom of Saudi Arabia' (2014) <<http://www.inhousecommunity.com/article/the-new-sama-insurance-dispute-committee-rules-in-the-kingdom-of-saudi-arabia/>> accessed 14 November 2019.

²⁶² Working Rules, Article 9(1) (emphasis added).

²⁶³ Beswetherick and Alsaab (n 205).

²⁶⁴ Working Rules, Article 10.

²⁶⁵ Ibid, Article 11. The rules are that this could be extended, if there is an excuse that is acceptable to the committee; *ibid*.

Committee, while drawing their conclusion, the Committee will cast votes and the decision will be determined by the majority vote at both primary and appellate levels.²⁶⁶

Decisions on cases brought before a Committee become final in three situations. First, a decision will be final if it is settled through conciliation by the parties. Conciliation can either take place before a Primary Committee or through mediation that is facilitated by the General Secretariat.²⁶⁷ Second, after a Primary Committee issues a decision, the parties have 30 days to lodge an appeal against it. If no appeal is made, the decision becomes final.²⁶⁸ The decision subsequently issued by the Appeal Committee is final and not subject to any grievances.²⁶⁹

Turning to the issue of remedies, there are a number of remedies available to an insurer, if a policyholder breaches a policy. While these are not specifically enumerated in the law or regulations, practice has demonstrated that IDCs are likely to recognise the following: avoidance of the policy, if the policyholder has breached the duty of disclosure or made a misrepresentation; refusal to pay the claim, because the insured party has breached the warranty causing the loss; failure to give force to a policy, due to a policyholder's breach of a condition precedent, and cancellation of the non-payment of a premium.²⁷⁰ With regard to the policyholder, he or she may bring a claim based on the insurer's general duty to perform and the principles of good faith that are embodied in *Shariah*, but there is no independent cause of action based on bad faith.²⁷¹ Particularly egregious conduct by the insurer can be brought to the attention of SAMA (or previously the Board of Grievances) for the application of sanctions.²⁷² A good example of this is *Al-Ahlia Cooperative Insurance Company v The Committee for the Settlement of Insurance Dispute*,²⁷³ where an insurer was held by the Board of Grievances to be in violation of the CICCL, because it distributed 90% of its profits to shareholders and only 10% to policyholders. The Board held that such conduct was egregious, given that insurance

²⁶⁶ Ibid, Article 9.

²⁶⁷ The Guidelines (n 78) 7. Should the parties wish to consensually engage in settlement disputes or conciliation efforts, the General Secretariat may assign a mediator (either an employee or expert) to facilitate the resolution of the dispute. This mediator will provide a legal or technical opinion and propose an amicable resolution. If the parties agree to the resolution, it will be memorialized and signed by the parties. The mediator must also sign a document reflecting the work he has performed on the case. The mediation period will last for 30 days from the date of assigning the mediation, and either party can withdraw at any time; *ibid*.

²⁶⁸ Ibid, 8.

²⁶⁹ Ibid, 7-8.

²⁷⁰ Hachem et al (n 127).

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Board of Grievances, Circle Seven Decision No. 157/D/A/7, Case No. K/1/35 (2008).

companies in the KSA are required to manage the insurance pool, rather than make abnormal profits for themselves and their shareholders.²⁷⁴

Given that all parties are required to submit disputes to the IDC, it could infer that the Saudi legislator has offered a single, interest-based, formal process. This is because the process involves direct negotiation by the parties, with the assistance of a third-party neutral. The latter may be a mediator at the General Secretariat, or an IDC adjudicator in a Primary Committee. Moreover, disputes in the IDC are resolved according to the interests of the parties, with less emphasis on prescribed rights. As noted above, Ury et al. declare that examples of interest-based processes include the use of mediation and an ombudsman. The IDC takes recourse in mediation at the General Secretariat and if mediation fails, the parties are required to submit the dispute to a Primary Committee. In addition, the adjudicator in the Primary Committee is akin to an ombudsman, because he is appointed by the government to investigate complaints made by individuals or insurance companies.

Ury et al. also state, as cited earlier, that interest-based processes often yield the highest satisfaction with outcomes. This justifies the Saudi legislator's choice of an interest-based process. However, it does not justify the requirement that parties use this process alone. Given that parties are required to use mediation, followed by the Primary Committee, they cannot 'loop back' or 'loop forward' between the interests-based process and other rights-based processes, such as arbitration and litigation. Furthermore, participation in the process is neither voluntary nor confidential, and it is uncertain whether all key players in the Saudi insurance industry – as well as in the wider community – were originally involved in the system's design. As such, it would have been more appropriate to provide the parties with multiple process options, including both interest-based and rights-based processes.

2.5.2 Specific Challenges to Insurance Dispute Resolution

Despite the great strides forward made by the KSA in streamlining its insurance dispute resolution, there are still a number of challenges faced by adjudicators or other independent persons selected by parties to settle disputes. It remains uncertain how the adjudicator or

²⁷⁴ Ibid 6-9. The Board's decision was motivated by a fatwa issued by the Ulama (Islamic scholars), prohibiting conventional insurance. Conversely, the IDC assessed the policyholder's complaints on its merits, without regard to the nature of the insurer's business or whether this violated the *Shariah* and rendered void any insurance contracts entered into.

tribunal should handle an insurance policy that purports to cover general liability, but contains an exclusion clause that arises out of, or is linked to, all the policyholder's activities. To clarify further, this is where the exclusion clause identifies a category of claims that are not covered by the policy; a category that includes most of or even all possible events or risks associated with the policyholder's activities. In such circumstances, it would be unfair to enforce the exclusion clause as written, given that the clause renders the coverage worthless. In jurisdictions such as the United States, the policyholder may ask the court or tribunal to assess the policy under the illusory coverage doctrine.²⁷⁵ This doctrine is generally invoked in cases where the policy's language gives the policyholder the illusion that certain risks are covered, when in fact they are not. This is unfair to policyholders who have consistently paid premiums, unaware that the policy was drafted in such a way that there could never be any coverage of risks associated with those activities.

Thus, given that the interpretation of a contract is geared towards determining the nature of the bargain that both parties seek to make, it is justified for courts to be suspicious of policies that contain illusory coverage.²⁷⁶ The court cannot assume that the policyholder intended to pay money under a worthless policy, leaving him or herself exposed to risks. The illusory coverage doctrine therefore enables the court to interpret the contract in light of the policyholder's reasonable expectations. However, although the CICCL provides parties with an interest-based process, the doctrine of illusory coverage has not been invoked in the KSA. Hence, it is uncertain how policyholders can challenge insurance companies that make adverse determinations based on policies containing illusory coverage.

Moreover, it is also uncertain how the Saudi adjudicator or tribunal handles insurance policies that contain ambiguous terms, which are interpreted by insurance companies in a manner that unfairly prejudices the policyholder. Courts in the United States and to a limited extent, the United Kingdom, have been guided by Keeton's doctrine of reasonable expectation.²⁷⁷ This

²⁷⁵ For an analysis of the illusory coverage doctrine, see Weiss (n 148) 1548-1554; G Munro, 'Exposing 'Illusory' Underinsured Motorist Coverage' (2003) *Trial Trends* 28, 28-36.

²⁷⁶ S Williston and RA Lord, *A Treatise on the Law of Contracts* (4th edn, West Group, 1993) 32:2 (In interpreting a contract, the court's primary purpose and function is to determine and give effect to the intention of the parties, because 'a contract represents the parties' private agreement as to their legal relationship, liabilities and rights').

²⁷⁷ In the English Case, *Cook v Financial Insurance Co* [1998] 1 WLR 1765, 1768, Lord Lloyd held that the policy needs to be 'construed in the sense in which it would have been reasonably understood by him [the policyholder] as the consumer.' However, the doctrine has not been broadly accepted in the UK, because it is argued that the term 'reasonable' is in itself ambiguous and most cases addressed by the doctrine could be resolved by applying established common law contract doctrines, such as *contra proferentem*, fundamental breach, and estoppel. In Canada, the use of the reasonable expectation doctrine is limited to contracts containing ambiguities. See O Brand,

doctrine is to the effect that the court should deny the insurance company an unconscionable advantage in an insurance policy and honour the reasonable expectations of the policyholder and intended beneficiary.²⁷⁸ It was contended by Rahdert that the controlling code for determining parties' rights and duties is that the policyholder's reasonable expectation of coverage should be powerful enough to override the literal interpretation of the policy's terms.²⁷⁹

A related doctrine adopted by the courts of the United Kingdom and United States to deal with ambiguities in contracts is *contra proferentem*.²⁸⁰ This is to the effect that where a clause in an insurance contract is ambiguous or susceptible to more than one reasonable interpretation, it will be construed against the insurance company that drafted the contract.²⁸¹ This doctrine has been described as 'a first principle of insurance law';²⁸² it guides the court's interpretation of the contract, allowing it to determine what an ambiguous provision means. Thus, courts use the doctrine as a policy tool to discourage ambiguity.²⁸³

Illusory coverage, ambiguities in contracts, and unconscionable advantages gained by insurance companies, often result in adverse coverage determinations by insurance companies.

'Contract Terms: Judicial Approaches to the Interpretation of Insurance Contracts' in J Burling and K Lazarus (eds), *Research Handbook on International Insurance Law and Regulation* (Edward Elgar, 2011), 112-113.

²⁷⁸ See RE Keeton, 'Insurance Law Rights at Variance with Policy Provisions (Parts I and H)' (1970) 83 *Harvard Law Review* 961; RE Keeton, 'Reasonable Expectations in the Second Decade' (1976) 12 *FORUM* 275; RE Keeton and A Widiss, *Insurance Law* (West Publishing, 1988), 6.01-6.10. See also, *First Energy (UK) Ltd v Hungarian International Bank, Ltd* [1993] 2 *Lloyds Rep* 194, [196] (Steyn LJ held that the protection of reasonable expectation is not just a principle but an 'objective' and 'moulding force' to contract law).

²⁷⁹ MC Rahdert, 'Reasonable Expectations Reconsidered' (1998-1999) 5 *Connecticut Insurance Law Journal* 107, 115-143. See also, PN Swisher, 'Judicial Rationales in Insurance Law: Dusting Off the Formal for the Function' (1991) 52(4) *Ohio State Law Journal* 1037, 1039-1058.

²⁸⁰ See J Bailey, *Construction Law* (2nd edn, Informal Law, 2016), 3.168-3.169; EE Duncan, 'The Demise of 'Contra Proferentem' as the Primary Rule of Insurance Contract Interpretation in Ohio and Elsewhere' (2006) 41(4) *Tort Trial and Insurance Practice Law Journal* 1121, 1121-1140; SH Cohen and KL Quaintance, 'Role of Contra Proferentem in interpretation of Insurance Contracts' (1989) 2(1) *Environmental Claims Journal* 13, 13-28.

²⁸¹ EM Holmes and JA Appleman, *Holmes' Appleman on Insurance* (Lexis Law, 1996), 6.1; RH Jerry, *Understanding Insurance Law* (2nd edn, LexisNexis, 2012), 25A. See also, J Stempel, 'Reassessing the Sophisticated Policyholder Defense in Insurance Coverage Litigation' (1993) 42 *Drake Law Review* 807, 810-811 ('Contra proferentem continues to have force when applied to many coverage questions because most policyholders are nondrafters who have nothing to say about the language of the contract. Consequently, if someone has to lose a contract dispute, one can make a good case [that] it should not be the nondrafting policyholder').

²⁸² See KS Abraham, 'A Theory of Insurance Policy Interpretation' (1996) 95 *Michigan Law Review* 531, 531. The use of the doctrine was justified in the US Case of *Phillips v Lincoln National Life Insurance Co*, 978 F.2d 302, 312 (7th Cir. 1992) ('The contra proferentem rule is followed in all fifty states and the District of Columbia, and with good reason. Insurance policies are almost always drafted by specialists employed by the insurer. In light of the drafters' expertise and experience, the insurer should be expected to set forth any limitations on its liability clearly enough for a common layperson to understand; if it fails to do this, it should not be allowed to take advantage of the very ambiguities that it could have prevented with greater diligence').

²⁸³ RA Posner, 'The Law and Economics of Contract Interpretation' (2005) 83 *Texas Law Review* 1581, 1608.

Policyholders in the KSA are confronted with similar problems. However, as noted above, it is uncertain how adjudicators and tribunals in the Kingdom interpret such contracts to ensure that parties are treated fairly. Equally, it is uncertain how the adjudicator or Primary Committee should handle conventional insurance contracts, containing elements such as *riba* and *gharar*, which violate the *Shariah*.

Al-Shehry examined Keeton's doctrine of reasonable expectation and considered how it could be applied in the Saudi insurance industry,²⁸⁴ submitting that the doctrine may help to design a new law that does not violate the *Shariah*. However, he did not examine the case law to determine how the Kingdom's courts and tribunals prevent insurance companies from gaining an unconscionable advantage, discourage ambiguities in insurance contracts, and protect the non-drafting parties, namely the policyholders. Moreover, neither did he seek to establish a link between Keeton's doctrine and the traditional Islamic philosophy of prioritising the parties' legitimate expectations.²⁸⁵ It follows that the broad discretion given to IDC adjudicators in the interest-based process, as well as the traditional Islamic philosophy of prioritising the parties' legitimate expectations, may lead to a high level of satisfaction with the process and outcome. Nonetheless, it does not justify compelling a form of adjudication, as opposed to providing disputants with multiple process options that include interest-based processes, such as mediation, and negotiation, with the use of an ombudsman, and rights-based processes, like arbitration and litigation.

Aljallal argues that Article 42 of the Code of Conduct applies the reasonable expectation doctrine, because it requires the consumer to make full and honest disclosure of all relevant information required for underwriting risk, as would a reasonable person.²⁸⁶ He notes that in the same vein, Article 15 of the Code of Conduct requires insurance companies or their intermediaries to disclose all relevant information to the insured party, in writing and in a timely, clear and accurate manner. He then concludes that the disclosure requirement is a 'clear inclination in the regulation to protect the assured as the weak party in the contract.'²⁸⁷ However, it is unclear whether the Saudi legislator has sought to protect the policyholder, or

²⁸⁴ A Al-Shehry, *The Reasonable Expectation Doctrine Knocks on the Saudi Legislative Council Door* (Unpublished Dissertation, Wake Forest University, 2014).

²⁸⁵ For a discussion of this philosophy, see G Sayen, 'Arbitration, Conciliation, and the Islamic Legal Tradition in Saudi Arabia' (2003) 24(4) *University of Pennsylvania Journal of Economic Law* 909, 943; NJ Coulson, *Commercial Law in Gulf States: The Islamic Legal Tradition* (Graham and Trotman, 1984) 82-93.

²⁸⁶ AA Aljallal, *The Duty of Good Faith in Insurance Law: A Study of Saudi Law Compared to English Law* (Unpublished PhD Dissertation, University of Southampton, 2014) 301.

²⁸⁷ *Ibid*, 303.

simply sought to ensure that both parties act in good faith through full and honest disclosure. This is because the insured party is also obligated to make a full and honest disclosure to the insurance company. In addition, the fact that both parties are assessed in light of the reasonable person standard does not imply that the Saudi legislator has adopted the reasonable expectation doctrine. This is because the insurance company may disclose information relating to the legal nature of the company,²⁸⁸ or of the product or policy being sold,²⁸⁹ along with all the fees and commissions,²⁹⁰ but the policy's language will still be sufficiently ambiguous to give the policyholder the illusion that certain risks are covered, when in fact they are not. Thus, although the insurance company has made full and honest disclosure as a reasonable person would in the circumstances, the policyholder's reasonable expectations have not been met. If IDC adjudicators had been required or empowered to take into account the policyholder's reasonable expectations, it may have justified compelling this form of adjudication, as opposed to providing policyholders with multiple process options, including rights-based processes such as binding arbitration and litigation. In Chapter 5, an attempt is made to develop the doctrines of illusory coverage and reasonable expectation in light of decided IDC cases. An attempt is made to demonstrate how the doctrines may be integrated with the working of the IDC committees in practice.

2.6 Conclusion

The *Quran* and *Sunnah* constitute the Kingdom's Constitution, and the government's authority is derived from these sources. Hence, the Saudi legal system is based on the principles of *Shariah*, which regulate all aspects of Muslim societies and states, including the methods by which legal rights are enforced. However, the *Quran* is not a code that exhaustively covers a system of laws, and the *Sunnah* is limited to the Holy Prophet's interpretations of certain verses while acting as mediator and negotiator. Also, different schools of Islamic jurisprudence offer different interpretations of the *Quran* and *Sunnah*, as well as different theories to fill in the loopholes in the holy texts. The Saudi legal system has designated the conservative *Hanbali* School as the official school of Islamic jurisprudence. It provides guidance on how courts in the Kingdom should address legal questions. Nonetheless, the *Hanbali* texts also have

²⁸⁸ The Code of Conduct, Article 30.

²⁸⁹ This includes information regarding the parties' obligations, as well as exclusions and benefits, cancellation rights and conditions, policy costs, and any usual condition that may be detrimental to the consumer; see *ibid*, Article 37.

²⁹⁰ *Ibid*, Article 40.

loopholes and it is argued here that judges are free to consult other schools of Islamic jurisprudence, wherever an issue is not covered by the accepted *Hanbali* texts. Adjudicators in the Kingdom may equally rely on secondary sources that interpret the *Quran* and further interpret the *Sunnah*. These are referred to as *fiqh*. However, there are different types of *fiqh*, and there is no consensus on which one *fiqh* takes precedence over the others.

The absence of a clear structure and hierarchy of laws may explain why, historically, there has not been much in the way of insurance sector regulation in the KSA. Also, regulation has been problematic because although the Kingdom's insurance sector has continued to grow and evolve, many areas of insurance, especially commercial insurance, remain controversial from the Islamic perspective. Only cooperative and mutual insurance models that do not involve charging interest and enforcing speculative contracts were deemed to be *Shariah*-compliant. Thus, the integration of the cooperative insurance model into Saudi law via the CICCL has allowed the market to grow exponentially, while still maintaining the legal and ethical principles mandated by *Shariah* law.

The goal of the Saudi model, like the models of other jurisdictions, is to provide financial security against the risk of loss or damage. This is accomplished by imposing duties and responsibilities on the various parties involved in the creation and regulation of insurance contracts. It is shown that the CICCL, Implementing Regulations, Working Rules, and Code of Conduct have also imposed a single, interest-based process option for dispute resolution in the form of the IDCs. This model is largely weighted in favour of the policyholder, in order to protect the public at large and to ensure that prejudice is not caused to the public interest.

It is argued that the Saudi legislator is justified in compelling this single form of adjudication, because insurance law in the KSA is essentially public interest law, and the model is consistent with *Shariah*, which prioritises the promotion of public welfare. Hence, it may be assumed that the imposition of duties on insurers to ensure that private insurance coverage is always consistent with the public interest is a workable social arrangement in the above context. Nevertheless, it remains to be seen whether this is the best model for the empowerment of consumers (or marginalised groups) seeking to challenge unfair adverse determinations by insurers.

The Primary Committee structure has more in common with an *ad hoc* administrative tribunal or ombudsman than with a functional branch of the judicial system. The Working Rules provide nothing in the way of guidance on how the Primary Committee should exercise discretion in practice. It is therefore uncertain whether the IDC administers justice in a manner that is fair to all consumers, especially low-income consumers who are in desperate need of money following a loss. The next Chapter is the first step towards determining whether the IDC is the best option for legislators seeking to enable consumers challenge unfair adverse determinations by insurers. In this light, it compares the IDC with the traditional, rights-based dispute resolution option, litigation.

Chapter 3: Comparing the Litigation and Administrative Tribunal Models

3.1 Introduction

This Chapter examines the role of dispute resolution in insurance law by comparing the litigation-based approach to the administrative tribunal model. It begins with a discussion of the importance of litigation in enabling policyholders to challenge insurers' adverse determinations. It then discusses the shortcomings of the litigation model and considers the argument that the expense and unpredictability of litigation could be avoided or reduced by channelling disputes towards an administrative system. The concept and nature of the administrative tribunal are assessed, as well as the use of the model in Islamic systems. The goal is to conduct an analysis of the existing model in the KSA and determine whether it is preferable, given the flexibility it aspires through modified rules of evidence, measures to minimise legal technicalities, and the delegation of broad investigative powers to administrative committees.

In light of the absence of a solidly grounded theoretical understanding of the model in the KSA, this Chapter maps the profile of the archetypal administrative tribunal. It then determines how the Insurance Dispute Committee (IDC), with similar functions to an administrative tribunal, is specifically tasked with resolving insurance coverage disputes in KSA. It therefore looks at how the IDC compares to the archetypal or paradigm²⁹¹ or quintessential administrative tribunal.²⁹² It shows that the IDC does not have the fitting qualities of the archetypal tribunal, and from a theoretical perspective, it is not a better option than litigation for resolving disputes

²⁹¹ For a detailed discussion of what constitutes the 'paradigm administrative tribunal', see P Cane, *Administrative Tribunals and Adjudication* (Hart Publishing 2009) 91-93.

²⁹² The term 'administrative tribunal' is used here to refer to a hybrid or quasi-judicial authority that is tasked with adjudicating disputes that arise from the regulation of a situation specified in the governing legislation. The disputes may involve administrative agencies or private individuals. The tribunal may be referred to as Committee, Authority or Board, and its procedures have traditionally been modelled on court procedures. See N Hawke and N Parpworth, *Introduction to Administrative Law* (Cavendish Publishing 1996) 65; P Cane, 'Judicial Review and Merits Review: Comparing Administrative Adjudication by Courts and Tribunals' in S Rose-Ackerman and PL Lindseth (eds), *Comparative Administrative Law* (Edward Elgar 2010) 426-427; HM MacNaughton, 'Future Directions for Administrative Tribunals: Canadian Administrative Justice – Where Do We Go From Here?' in R Creyke (ed), *Tribunals in the Common Law World* (Federation Press 2008) 224-225. See also, the Canadian case of *Re Ashby* (1934) OR 421, where it was held that 'The distinguishing mark of an administrative tribunal is that it possesses a complete, absolute and unfettered discretion and, having no fixed standard to follow, it is guided by its own ideas of policy and expedience.' See also, *Shell Co. of Australia v Federal Commissioner of Taxation* [1931] AC 275 where the Court noted that 'An administrative tribunal may act judicially, but still remain an administrative tribunal as distinguished from a Court, strictly so called.'

over insurance cover, because of the lack of clarity in IDC procedures, and ambiguities within the empowering legislation.

3.2 Insurance Dispute Resolution in the KSA

3.2.1 The Use of Litigation

Prior to the enactment of the CICCL, there were no specific forums for resolving insurance disputes, to the extent that they arose from the permissible *takaful* insurance products, or any products issued that were consistent with Cooperative Health Insurance Law.²⁹³ While the introduction of cooperative insurance as a regulated form of more traditional insurance in KSA did not occur until the CICCL was passed, insurance disputes existed prior to the law, specifically in relation to *takaful* insurance products and cooperative health insurance.²⁹⁴ Thus, prior to the establishment of IDCs under the CICCL, these disputes were either resolved by the Ministry of Commerce or the Board of Grievances.²⁹⁵

The Board of Grievances (*Diwan al-Mazalim*) was the first form of administrative tribunal to be created in KSA.²⁹⁶ It was initially established in 1955 to hear cases involving complaints against government officials and instances of injustice arising from the *Shariah* courts.²⁹⁷ In 1982, the passing of a new Board of Grievances law reformed the tribunal²⁹⁸ and over time, its jurisdiction expanded to cover most types of commercial cases and the enforcement of foreign judgments and awards.

Litigation before the Board of Grievances consisted of a series of short hearings. Modelled on civil law tradition, it was not characterised by lengthy pre-trial procedures or pleadings.²⁹⁹ Instead, after filing the initial complaint, the parties were summoned to a hearing, where they could file written submissions, present oral arguments, and produce evidence.³⁰⁰ It follows that the Board of Grievances ought to have been more efficient in settling disputes than the ordinary courts. However, there were often significant delays, lasting from weeks to months between

²⁹³ The Cooperative Health Insurance Law No. 71 of 11 August 1999 ensures the provision and regulation of healthcare to non-citizen residents of the KSA. The law therefore extends coverage of all cooperative health insurance to all non-Saudi citizens and their dependents. A residence permit is therefore granted only upon proof of cooperative health insurance coverage.

²⁹⁴ A Haberbeck, 'Risk Sharing in an Islamic Society' (1987) 2 *Arab Law Quarterly* 138, 145.

²⁹⁵ Ibid.

²⁹⁶ See AM Al-Jarbou, 'The Saudi Board of Grievances: Development and New Reform' (2011) 25(2) *Arab Law Quarterly* 177, 178; JL Brand, 'Aspects of Saudi Arabian Law and Practice' (1986) 9(1) *Boston College International and Comparative Law Review* 1, 18-19.

²⁹⁷ DE Long, 'The Board of Grievances in Saudi Arabia' (1973) 27(1) *Middle East Journal* 71, 71.

²⁹⁸ Royal Decree No M/51, 17 Rajab 1402 (10/5/1982).

²⁹⁹ Brand (n 6) 18.

³⁰⁰ Ibid.

hearings, as the Board was not required to follow a strict timetable.³⁰¹ Nonetheless, one of the main problems with the Board was the reluctance of its adjudicators to recognise and enforce conventional insurance contracts.³⁰²

A series of reforms to the Board of Grievances began in 2000, whereby the 1982 Decree was abolished and eventually replaced with the Royal Decree of 2007.³⁰³ However, this Decree required the Board of Grievances to act as a traditional administrative tribunal, but transferred jurisdiction over commercial disputes to the new Commercial Division of the General Islamic Court.³⁰⁴ Within this period of reform, the CICCL was introduced and along with it came specialised forums for resolving insurance disputes, thus removing them from the Commercial Division's jurisdiction.

What is clear from the above is that although the KSA maintains its legal basis in Islamic and civil law, it also makes use of sector-specific administrative committees.³⁰⁵ The CICCL empowers the IDC to consider prior cases and comparative jurisprudence when resolving insurance disputes. This reflects the doctrine of precedent. This precedent serves as a means of filling in any gaps in the regulations and ensuring that the regulations are interpreted and applied consistently among cases. This is a significant departure from the previous stance on the role of precedent in the *Shariah* system, which the judges of Board of Grievances and all other Islamic courts readily adopted.³⁰⁶ It is therefore uncertain whether the CICCL seeks to

³⁰¹ Ibid.

³⁰² In Appeal No. 1228/AS/6 Year 1431H, the Board of Grievances held that it would neither recognise nor enforce a contract that allows the insurer to use *riba* (interest) and *gharar* (speculation) to dupe policyholders into paying premiums. See also Appeal No. 3/T/141 Year 1407H where despite the intervention of the Governor, the Board of Grievances refused to enforce an insurance contract because the Board deemed that it was not *Shariah*-compliant.

³⁰³ Royal Decree No M/78 dated 19/9/1428 h (1/10/2007).

³⁰⁴ See AE Massadeh, 'An Analysis of the Civil Service Disciplinary System of Saudi Arabia and Kuwait: An Islamic Perspective and A Comparative Overview' (1992) 10(3) *Dickinson Journal of International Law* 461, 473-475.

³⁰⁵ In the insurance sector, there were other committees prior to the creation of the IDC. Article 101 of the Cooperative Health Insurance Law provided for the creation of the 'Committee for Violations of Cooperative Health Insurance Law' by the Chairman of the Council. This Committee was tasked with reviewing violations of the provisions of the Law. Article 107 required insurance companies to establish units for reviewing and handing complaints of policyholders and beneficiaries, and it noted that where the insurance companies could not establish such units, the complaints had to be submitted to the Insurance Dispute and Violation Resolution Committee that was set up by Ministerial Decree No. 222 of 25/07/1429 H.

³⁰⁶ Mikail and Arifin note that the doctrine of binding precedent does not have binding force in the Islamic judicial system because judges in Islamic courts are required to decide cases based on their own merits. However, they argue that the doctrine may have persuasive value because *Shariah* law does not expressly prohibit judges in Islamic courts from taking guidance from previous dicta. See SA Mikail and M Arifin, 'Application of Judicial Precedent in *Shariah* Courts' (2013) 2 *Malaysian Court of Practice Bulletin* 1, 1-6. See also Brand (n 4) 4, 13. (Precedent 'is not a source of law in Islamic jurisprudence' and 'there is no formal role for precedent in the Shari'a system. A qadi is not bound by earlier decisions, including those of his court'); M Munir, 'Precedent in Islamic

give precedent a bigger role than previously recognised in Islamic jurisprudence or the goal is that precedent would have only persuasive value. The observance of the doctrine will be enhanced by the fact that cases coming out of the IDC Committees are published, which may ensure predictability.³⁰⁷ This is something that has historically not been done in the Saudi judicial system³⁰⁸ where judges and lawyers are required to look to statutes and regulations to find solutions. The decisions of the Board of Grievances are generally not published. Article 21 of the Law of the Board of Grievances of 1982 (Royal Decree No. M/51) provided that at the end of each year, the office for technical affairs comprising judges and researchers would classify judgements rendered by the Board and publish them in volumes. This was not done. The Royal Decree No. M/78 which abolished and replaced Royal Decree No. M/51 provides in Article 71(3) that the Research Centre at the Ministry of Justice shall publish select judgments of all courts (including the Board of Grievances) with the approval of the Supreme Judicial Council. However, the Research Centre at the Ministry of Justice has since published only a handful of the decisions of the Board of Grievances.³⁰⁹

Since its creation, the KSA has grounded itself in civil law tradition to complement its *Shariah* law system by establishing written laws, which are accompanied by implementing regulations and working rules. This provided the public and the Board of Grievances with clear provisions on how to comply with the law and apply it in the event of a dispute.³¹⁰ Nonetheless, the IDC model accommodates formal doctrinal precedent in ADR structures and requires the Committees to publish their decisions.

In addition, the General Secretariat and panels of the IDC perform conciliatory functions that closely resemble those of an ombudsman. While the primary role of the General Secretariat is to provide administrative support to the Committees, it also vets cases for the possibility of early stage resolution through mediation. It is not empowered to make decisions. The panels,

Law with Special Reference to the Federal *Shariah* Court and the Legal System in Pakistan' (2008) 47(4) *Islamic Studies* 445, 445-482. (Showing that there is no evidence about the role of binding precedent in Islamic law).

³⁰⁷ The Council of Ministers Resolution No. 190 dated 9/5/1435H approved the rules and procedures of the IDC and Article 13 of the Resolution requires the General Secretariat to classify and publish IDC decisions. The motivation for requiring the publication of the decisions is not discussed. However, it may be assumed that the objective is to enhance transparency, accountability, and efficiency of the IDC since the publication of decisions increases access to information about outcomes and also enhances the predictability of the system.

³⁰⁸ J Fedynskyj (J Dainow, ed) 'The Role of Judicial Decisions and Doctrine in Civil Law and Mixed Jurisdictions' (1975) 50(3) *Indiana Law Journal* 638, 637.

³⁰⁹ The decisions, many of which are cited in this thesis, are actually expedited opinions that are published in draft form reflecting the substance of the judges' decisions.

³¹⁰ See Chapter 2.

on the other hand, are empowered to make decisions after investigating the complaints that have not been solved by mediation. It is noted in Chapter 2 that the Saudi legislator is justified in compelling this interest-based process that takes into account the interests of the parties and the public. It is uncertain whether it is more efficacious than litigation in the courts of the Board of Grievances.

The use of alternative interest-based means of dispute resolution by a government agency is the core of the IDC process and the foundation on which it is built. It is essentially a quasi-judicial approach to sector-specific dispute resolution. As will be shown below, when labelling this model, the administrative tribunal tag is most appropriate because the IDC Committees are constructed and operate consistently using this approach. By rooting the forum in an administrative tribunal process, it has provided sector-specific dispute resolution by experts who are familiar with the subject matter. Moreover, there are clear regulations to ensure *Shariah* compliance, while at the same time permitting the creation and use of precedent for the consistent interpretation and application of legal principles. The rights of consumers and the interests of the public have taken centre stage, as the General Secretariat has been accorded powers to safeguard the public interest and minimise the burden on the IDC.

3.2.2 The Use of Administrative Tribunals

As shown in Chapter 2, the Saudi legal system represents a fragmented amalgamation of various influences from other legal systems. When exploring its structures, one can identify elements of common law, civil law, and Islamic legal traditions.³¹¹ One of the most recent developments in the Saudi legal system over the past few decades has been the creation of the sector-specific administrative committee – a form of administrative tribunal – tasked with hearing disputes of a particular nature. Examples of these tribunals include the Commission for the Settlement of Commercial Disputes, the Commercial Paper Committee, the Agency Conciliation Committee, the Commission for Labour Disputes, and of course, the IDC.

The KSA's administrative tribunals are generally quasi-judicial forums, established by Royal Decree, which have jurisdiction over a specific topic and area of law and are generally subject

³¹¹ The influence of Continental European civil law tradition is stronger than that of the common law tradition. See A Husein and J Burns, 'Choice of Forum in Contracts with Saudi Arabian Counterparties: An Analysis of the DIFC Common Law Courts from a Saudi Arabian Perspective' (2015) 48(3) *International Lawyer* 179, 182-183. See also AD Marar, 'Saudi Arabia: The Duality of the Legal System and the Challenge of Adapting Law to Market Economies' (2004) 19(1/4) *Arab Law Quarterly* 91, 91-123.

to the principles of *Shariah* law. While the majority of these tribunals deal with issues involving the application of a statute or its implementing regulations, they have been vested with the jurisdiction to resolve disputes between two non-governmental parties within a specific sector. By allowing for the involvement of specialised tribunals and expert panellists, there is an increased likelihood that the decisions issued by the tribunals will be consistent with industry practices and equitable for the parties involved.³¹² In its current iteration, the Saudi administrative system has been criticised for failing to provide a ‘transparent, reliable, predictable or comprehensive legal framework for resolving commercial disputes’ due to structural defects and a lack of infrastructure to support the desired changes.³¹³ Hence, for administrative committees to be effective in resolving disputes, the system must continue to evolve and become more refined.

Administrative committees in the KSA exist in many sectors as shown above. Other committees include the Tax Committees,³¹⁴ Committee for Penalizing Traffic Violations,³¹⁵ the Mining Disputes Committee,³¹⁶ the Fraud, Cheating and Speculation Committee,³¹⁷ the Banking Disputes Settlement Committee,³¹⁸ and the Copyright Committee.³¹⁹ Although these committees are not recognised under the Basic Law of Governance as being part of the judicial authority, they exercise judicial powers to resolve disputes arising from the implementations of their subject matter laws.³²⁰ The Decree authorising the creation of such committees typically establishes their jurisdiction.

³¹² The debate about the loss of formal procedures and the increased use of informal dispute resolution forums has raged for a while now, with many arguing that there are not enough cases and decisions available to generate the requisite precedent in order to transparently establish reasoned doctrines and rules to govern society. See C Menkel-Meadow, ‘Regulation of Dispute Resolution in the United States of America: From the Formal to the Informal to the “Semi-final”’ in F Steffek et al (eds), *Regulating Dispute Resolution: ADR and Access to Justice at the Crossroads* (Hart 2013) 419, 423-424. See also SN Subrin, ‘Litigation and Democracy: Restoring a Reasonable Prospect of Trial’ (2011) 46 *Harvard Civil Rights-Civil Liberties Law Review* 399; C Menkel-Meadow, ‘Whose Dispute Is It Anyway? A Philosophical and Democratic Defense of Settlement (in Some Cases)’ (1995) 83 *Georgetown Law Journal* 2663; O Fiss, ‘Against Settlement’ (1984) 93 *Yale Law Journal* 1073. However, the argument about the lack of sufficient cases and decisions does not hold in the KSA given that the doctrine of binding precedent does not play any role in the *Shariah* system and the decisions of courts are generally not published. Nonetheless, this may become important with the recognition of the doctrine by the CICCL.

³¹³ R Al Mallakh, *Saudi Arabia: Rush to Development* (Routledge 2019) (noting that ‘[a] nation growing as rapidly as Saudi Arabia puts tremendous strain on its administrative apparatus’ and that one of the main objectives of reform and development is ‘improvement in the efficiency of the operation and management of the... government’s administrative system’).

³¹⁴ The Income Tax Law, Royal Decree No. 17/28/322 (21/1/1370H, Nov. 1, 1950).

³¹⁵ The Traffic Law, Royal Decree No. M/49 (6/11/1391H, Dec. 23, 1971).

³¹⁶ The Mining Law, Royal Decree No. M/21 (20/5/1392H, Jul. 1, 1972).

³¹⁷ The Council of Minister Decree No. 11 (6/12/1400H, Oct 14, 1980).

³¹⁸ The Prime Minister Decision No. 8/729 (10/7/1407H, Mar. 9, 1987).

³¹⁹ The Copyright Law, Royal Decree No. 1 (19/5/1410H, Dec. 18, 1989).

³²⁰ AF Ansary, ‘A Brief Overview of the Saudi Arabian Legal System’ (Global Lex, 2008) <http://www.nyulawglobal.org/globalex/Saudi_Arabia.html#_ednref176> accessed 14 November 2019.

3.2.2.1 The Concept of the ‘Administrative Tribunal’

Administrative tribunals are used in many countries to resolve sector-specific disputes, which would otherwise place an excessive burden on the judicial system.³²¹ Administrative tribunals differ from regular courts and are set up as necessary concomitants of the administrative state, with less technicality and better accessibility for the general public.³²² In addition to the KSA, some of the notable countries that have implemented these administrative systems include the United States,³²³ United Kingdom,³²⁴ Canada,³²⁵ Malaysia,³²⁶ India,³²⁷ Australia,³²⁸ and New Zealand.³²⁹ In most of these countries, the administrative tribunal ‘may be referred to as a person or body of persons or an administrative agency not forming a part of the judiciary with limited statutory powers to determine disputes and pass binding decisions between individuals or individuals and officials in a government department.’³³⁰

Since the mid-1900s, there has been a marked rise in the use of administrative tribunals worldwide.³³¹ Researchers have identified various reasons for this rapid growth, primarily in North America, Europe, and Asia. First, the significant and continued expansion of governmental functions in the decades following the industrial revolution, coupled with the emergence of the concept of the welfare state, prompted countries to adopt the use of

³²¹ R Thomas, ‘From “Adversarial v Inquisitorial” to “Active, Enabling, and Investigative”: Developments in UK Administrative Tribunals’ in L Jacobs and S Baglay, *The Nature of Inquisitorial Processes in Administrative Regimes* (Routledge 2013) 51, 52-54; M Elliott and R Thomas, *Public Law* (3rd edn, Oxford University Press 2011) 633-758; HH Bruff, ‘Specialized Courts in Administrative Law’ (1991) 43 *Administrative Law Review* 329, 332-337; R Carnwath, ‘Tribunal Justice: A New Start’ (2009) *Public Law* 48, 48-69.

³²² KC Joshi, ‘Service Tribunals under Administrative Tribunals Act’ (1986) 28(2) *Journal of the Indian Law Institute* 207, 207-208.

³²³ See HM Bowman, ‘American Administrative Tribunals’ (1906) 21(4) *Political Science Quarterly* 609 (accounting for the origins of administrative tribunals in the US).

³²⁴ See D Drewry, ‘The Judicialisation of ‘Administrative’ Tribunals in the UK: From Hewart to Leggatt’ (2009) 28 *Transylvanian Review of Administrative Science* 45.

³²⁵ See Government of Canada, ‘Administrative Tribunals Support Service of Canada’ (2017) <<https://www.canada.ca/en/administrative-tribunals-support-service.html>> accessed 14 November 2019 (detailing the various sector-specific tribunals).

³²⁶ See Oxford Business Group, *The Report: Malaysia 2014* (Oxford Business Group, 2015).

³²⁷ See A Jha, *Administrative Tribunals of India: A Study in the Light of Decided Cases* (Working Paper, 2015) 17.

³²⁸ Australia Government, *State Administrative Tribunal* (SAT, 2017) <<http://www.sat.justice.wa.gov.au/>> accessed 14 November 2019.

³²⁹ See AH McLintock, ‘Administrative Tribunals’, *An Encyclopedia of New Zealand* (1966); Law Commission, *Tribunals in New Zealand* (Wellington 2008) <<http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20IP6.pdf>> accessed 14 November 2019.

³³⁰ H Genn, ‘Tribunals and Informal Justice’ (1993) 56 *Modern Law Review* 393, 393. See also P Johnson, ‘Tribunal Administration’ (2012) <<http://www.peterdjohnson.net/tribunaladmin.htm>>, accessed 14 November 2019.

³³¹ Johnson, *ibid*.

administrative tribunals as a means of promoting and protecting the economic and social interests of their citizens.³³² Second, it has been recognised that society requires a form of flexible adjudication, suited to changing social requirements and industry needs, and this outweighs the need for formal and rigid procedures, which are ingrained in the operations of ordinary courts of law.³³³

Third, the rapid growth of economies, and the expansion of industry sectors and commerce have given rise to an increase in the number of disputes that need to be resolved expeditiously.³³⁴ The ordinary court structure, already burdened with heavy dockets, has not been placed in a position to be able to take on this ever-increasing case load.³³⁵ As a result, when using the ordinary courts, litigants face systemic inefficiency and extensive delays, leading to increased costs and potentially, further damages.³³⁶ Sector-specific administrative tribunals, with limited jurisdiction over disputes in specific industries and their own sets of laws and regulations, have arisen as a viable alternative to the court structure.³³⁷ Hence, administrative tribunals were designed to overcome the shortcomings of existing litigation systems. As a result of their reduced scope and specialised nature, these tribunals are able to accelerate the process and render it more efficient, moreover, at a more affordable price for the parties, compared to the realities of traditional litigation.³³⁸

Finally, when technical matters, or in particular, industry-specific disputes arise, there is generally some concern that the ordinary courts may be unable to deliver justice in an expeditious manner to the parties involved.³³⁹ This concern stems from the reliance of ordinary courts on formalistic procedures, including rules on evidence, hearings, and witnesses, and an overly legalistic attitude, which places form over legislative function.³⁴⁰ The judges in ordinary judicial structures are trained in the classic traditions of law and jurisprudence and are often

³³² P Leelakrishnan, 'Reviewing Decisions of Administrative Tribunal: Paternalistic Approach of the Indian Supreme Court and Need for Institutional Reforms' (2012) 54(1) *Journal of the Indian Law Institute* 1, 1-2; Drewry (n 31) 47-48. For a detailed analysis of the historical development of administrative tribunals, see RE Wraith and PG Hutchesson, *Administrative Tribunals* (George Allen and Unwin 1973); C Stebbings, *Legal Foundations of Tribunals in Nineteenth Century England* (Cambridge University Press 2006).

³³³ L Sossin, 'Designing Administrative Justice' (2017) 34(1) *Windsor Yearbook of Access to Justice* 87, 88-89;

³³⁴ J MacFarlane, *The New Lawyer: How Settlement is Transforming the Practice of Law* (UBC Press 2008) 9.

³³⁵ SH Rifkind, 'Are We Asking Too Much of Our Courts?' (1976) 70 *Federal Rules Decisions* 96, 99-100.

³³⁶ AB Overby, 'An Institutional Analysis of Consumer Law' (2001) 34 *Vanderbilt Journal of Transnational Law* 1219, 1277.

³³⁷ Johnson (n 40).

³³⁸ JTA Gabel, 'Escalating Inefficiency in Workers' Compensation Systems: Is Federal Reform the Answer?' (1999) 34 *Wake Forest Law Review* 1083, 1089.

³³⁹ Ibid.

³⁴⁰ Ibid.

incapable of comprehending the impact of minutiae in technical cases.³⁴¹ As cases become more complex, with the advances made by modern society, the need for individuals to possess expert knowledge or have access to experts in order to preside over these disputes has become even more pressing.³⁴² With regard to disputes concerning insurance cover, it is noted above that most insurance policies are based on sequential and contingent contracts, which do not clearly specify the parties' rights and obligations in the event of risk. Thus, expert knowledge and experience are often required to assess the coverage determined by insurers, who may rely on technical and complex language to wrongly cut payment claims and increase their revenue. Many states such as the KSA have therefore created sector-specific administrative tribunal regimes to fulfil the above-mentioned needs and allow for the expeditious and judicious resolution of such matters.³⁴³

3.2.2.2 The Nature of the Tribunal

The administrative tribunal system runs parallel to the court system, in a space situated somewhere between the executive and judiciary bodies.³⁴⁴ This explains why tribunals may conveniently be used as a legal control mechanism for decision-making in the administration.³⁴⁵ While they have many similarities to the courts under the judicial system, they are distinct in a number of key ways.

First, administrative tribunals occupy a unique space within the administrative structure of the government's executive arm, unlike the ordinary courts, which fall squarely within the judiciary branch. The administrative tribunal is neither an executive body nor a court, but is rather a hybrid, combining elements of both.³⁴⁶ In fact, some jurisdictions that utilise

³⁴¹ AK Agnihotri, 'Tribunalisation of Justice' (*The RTT*, 2017) <<http://thertt.com/Articles/daf780fe-3dd7-46ab-83cf-5b7b99c15ded.html>> accessed 14 November 2019.

³⁴² Ibid; Johnson (n 40).

³⁴³ CN Pickerill, 'Specialized Adjudication in an Administrative Forum: Bridging the Gap Between Public and Private Law' (2007) 82(4) *Notre Dame Law Review* 1605, 1610.

³⁴⁴ Different countries place administrative tribunals under different branches of the government. In the UK, for example, adjudicative tribunals are supervised by the judiciary, whereas in Canada, these tribunals form part of the executive branch. See *Ocean Port Hotel Ltd v British Columbia (General Manager, Liquor Control and Licensing Branch)* 2001 SCC 52 (Supreme Court of Canada (SCC)).

³⁴⁵ KI Vibhute, 'Administrative Tribunals and the High Courts: A Plea for Judicial Review' (1987) 29(4) *Journal of the Indian Law Institute* 524, 524-525; R Creyke, 'Administrative Justice: Towards Integrity in Government' (2007) 31 *Melbourne University Law Review* 705, 722-731.

³⁴⁶ Administrative tribunals are judicial, insofar as they engage in fact-finding to impartially resolve a dispute brought before them, in light of the existing law and without regard for executive policy. Additionally, the courts are administrative to the extent that the preferential reasons for utilising tribunals, as opposed to the ordinary courts, stem from a need for efficiency from the administrative agency.

administrative tribunals expressly declare that they are public bodies, which exist and operate outside of the court system.³⁴⁷ Thus, these tribunals are more likely to be appropriate quasi-judicial bodies, created by specific legislative or agency actions, for the purposes of adjudicating disputes arising from a particular law or set of rules and regulations. As a result, administrative tribunals are not generally required to observe the rules and formalities of the ordinary courts when adjudicating disputes.³⁴⁸ Typically, they have broader rules of evidence and more flexible procedures for engaging in fact-finding than ordinary courts.³⁴⁹

Furthermore, unlike ordinary courts, which have typically had broad jurisdiction and held unlimited powers to hear the cases brought before them, administrative tribunals have limited adjudicative powers.³⁵⁰ Therefore, the tribunals are restricted to hearing cases involving the legal subject matter for which they are empowered by the instituting legislation or order.³⁵¹ When handling the disputes that come before them, administrative tribunals may exercise broad discretion and deal with them subjectively, in contrast to the ordinary courts, which are required to handle disputes objectively.³⁵²

In terms of those presiding over cases, administrative tribunals are composed of administrative officials, some of whom may be required to have a legal background, and other technical experts in the subject field,³⁵³ whereas ordinary courts of law are presided over by classically trained judges. Moreover, in applying the law, judges have broad powers to opine on the constitutionality or inherent fairness of a law that is implicated in a dispute, but tribunals are not afforded the same powers.³⁵⁴ Instead, they are required to interpret and apply the law that is relevant to the dispute and adjudicate cases in light of that law, even though they cannot strike down the law itself.³⁵⁵

³⁴⁷ Cane (n 1) 23-68; A Yohannes and DG Michael, 'The Advantages and Disadvantages of Administrative Adjudication' (2012) <<http://www.abyssinialaw.com/study-on-line/item/314-the-advantages-and-disadvantages-of-administrative-adjudication>> accessed 14 November 2019. See also O Duru, 'Administrative Adjudication: Tribunal, Costs and Inquiries in Perspective'. <https://www.academia.edu/6792750/Administrative_Adjudication_Tribunal_Courts_and_Inquiries_in_Perspective> accessed on 14 November 2019.

³⁴⁸ Johnson (n 40); Duru (n 57); Yohannes and Michael (n 57).

³⁴⁹ Ibid.

³⁵⁰ Johnson (n 40).

³⁵¹ Duru (n 57).

³⁵² L Chandrakanthi, 'Administrative Tribunals Under Indian Constitution: An Overview' (2016) 2(4) *International Journal of Legal Developments and Allied Issues* <<http://ijldai.thelawbrigade.com/wp-content/uploads/2016/07/Chandrakanthi.pdf>> accessed 14 November 2019.

³⁵³ Ibid.

³⁵⁴ Ibid.

³⁵⁵ Jha (n 37) 17.

In performing their duties, administrative tribunals should be free of any interference from the government or from other administrative agencies,³⁵⁶ although this may not always be the case, given that the adjudicators are actually appointed by government agencies. The statutes that establish these tribunals typically contain provisions on their composition, powers, and functions. Beyond this, however, the government agencies concerned are generally not empowered to become involved with the tribunals' operations.³⁵⁷ Finally, once an administrative tribunal issues a decision, the decision will be subject to judicial review only in a limited number of circumstances.³⁵⁸

3.2.2.3 The Use of Administrative Tribunals in Islamic Countries

As explained in greater detail below, the administrative tribunal model has been adopted in KSA to resolve insurance-related disputes. The assessment of this model in KSA is the main thrust of this chapter. Administrative tribunals created within the Saudi insurance sector to hear a clearly defined set of disputes are quasi-judicial bodies, which perform functions similar to those of the courts, but remain independent of the judicial system. As noted above, this approach has been widely adopted in various sectors across the globe,³⁵⁹ including in some neighbouring Muslim-majority countries. However, many Muslim-majority countries still prefer litigation. The next section briefly compares two cases, Pakistan and the United Arab Emirates (UAE). In Pakistan, insurance disputes are adjudicated by a specialised body, while in the UAE, they are settled by the ordinary courts of law.

Article 121 of the Insurance Ordinance of 2000 empowered the Federal Government of Pakistan to create tribunals with jurisdiction over insurance matters.³⁶⁰ The tribunals established under this Ordinance are referred to as Insurance Appellate Tribunals (IAT) and each consists of at least three members: a chairperson who may be a serving or retired judge, and at least two additional members with knowledge of the insurance industry.³⁶¹ Notably, the law is silent on the issue of the independence of these tribunal members, but provides that 'no

³⁵⁶ Ibid.

³⁵⁷ Ibid.

³⁵⁸ See RS French, 'Judicial Review Rights' (2001) 28 *Australian Institute of Administrative Law Forum* 30, 32; M Barker and R Simmonds, 'Delivering Administrative Justice in WA' (2004) 84 *Reform* 23, 23-24.

³⁵⁹ See Cane (n 57) 23-68.

³⁶⁰ Insurance Ordinance 2000 § 121.

³⁶¹ See Article 121(2) of the Insurance Ordinance. See also, National Judicial (Policy Making) Committee, *Administrative Tribunals and Special Courts Annual Report 2014* (Secretariat of Law and Justice Commission of Pakistan 2015) 137 [hereinafter National Judicial Committee Annual Report 2014].

act or proceeding of a Tribunal shall be invalid by reason only of... [a] defect in the constitution of the Tribunal.³⁶² Hence, an award granted by just one or two members of the panel may be enforceable in Pakistan.

In terms of the tribunal's powers and the scope of their jurisdiction, the IAT is vested with all the powers accorded to traditional courts for trying claims filed by a policyholder against an insurer.³⁶³ Furthermore, the tribunals may exercise any additional powers assigned to them under the Ordinance.³⁶⁴ Similar to the Saudi approach, the IAT has exclusive jurisdiction over insurance disputes, despite operating outside the traditional court structure.³⁶⁵

The procedures for IAT hearing insurance cases are the same as those applied in the civil courts.³⁶⁶ They are therefore governed by the Code of Civil Procedure.³⁶⁷ The IAT may demand the attendance of anyone with knowledge that is relevant to the case and take witness testimony. It may also compel the parties to produce documents.³⁶⁸ When rendering a decision, in the event that the decision is not unanimous, the majority opinion of the tribunal members will prevail.³⁶⁹ However, the law is silent on the process of deliberation to be adopted, and on the rationales or support on which the decision should be based, if applicable, beyond the stipulation for the decision to be in writing.³⁷⁰ Furthermore, unlike the Saudi approach, the law does not permit tribunals to consult an expanded scope of comparative jurisprudence. Nevertheless, the decisions of the IAT are final and may not be challenged in any court or before any authority,³⁷¹ although there is a limited exception for claims that exceed 100,000 rupees, which may be appealed to the High Court within 30 days of the date of the decision.³⁷²

Although research undertaken in this thesis revealed that there is no evidence of the influence of the Pakistani model in the KSA, it may be contended that the Pakistani model provides the foundation upon which the administrative tribunal system in an Islamic society may be built. This explains why there are many similarities between the Pakistani model and the subsequent approach adopted in the KSA. There are also significant cultural and regional similarities

³⁶² Insurance Ordinance § 121(6).

³⁶³ Insurance Ordinance 2000 § 122; Code of Civil Procedure 1908; Code of Criminal Procedure 1898.

³⁶⁴ Insurance Ordinance § 122.

³⁶⁵ Ibid.

³⁶⁶ Ibid § 123.

³⁶⁷ Code of Civil Procedure 1908.

³⁶⁸ Insurance Ordinance, § 122.

³⁶⁹ Insurance Ordinance § 123.

³⁷⁰ Ibid.

³⁷¹ Ibid § 124.

³⁷² Ibid.

between the two countries. However, the IAT in Pakistan is part of the judicial branch. It interprets and applies the law as a judicial body. The Saudi government has attempted to further develop its quasi-judicial model and, as it continues to implement reform, the Saudi model may serve as a better template for handling insurance coverage disputes in Islamic societies.

Another Muslim-majority country with established administrative bodies for settling civil and commercial disputes is the UAE. This country is unique, because it consists of two separate insurance jurisdictions. The first regulates ‘onshore’ UAE disputes, which comprises disputes from a federation of seven separate emirates,³⁷³ and the other regulates disputes in the free zones, including the Dubai International Financial Centre (DIFC). For the purposes of this analysis, the ‘onshore’ federation of the UAE will be examined, as opposed to the DIFC, which is a distinct jurisdiction.

Insurance in the UAE is governed by the 2007 Insurance Law, which applies to all companies seeking to register and obtain licenses to provide insurance products within the UAE, aside from in its free zones.³⁷⁴ In addition to the 2007 Insurance Law, a number of ancillary laws, resolutions, regulations, and Insurance Authority decisions work to regulate the UAE’s insurance sector.³⁷⁵

Despite the existence of administrative bodies for settling commercial disputes as a whole, when a dispute arises between a policyholder and an insurance company, a complaint must be submitted to the UAE courts.³⁷⁶ Thus, although there are ADR centres designed to handle labour, civil and personal disputes, the UAE does not have any specialised forums or procedures for handling insurance disputes specifically.³⁷⁷ Prior to initiating litigation, a client

³⁷³ The onshore UAE federation includes Abu Dhabi, Dubai, Sharjah, Ras Al Khaimah, Fujairah, Ajman, and Umm Al Qwain.

³⁷⁴ Federal Law No. 6 of 2007, concerning the Establishment of the Insurance Authority and Regulation of Insurance Operations.

³⁷⁵ These include: Federal Law No. 5 of 1985, the UAE Civil Code; Resolution of the Board of Directors of Insurance Authority No. 15 dated 2013, concerning Insurance Brokers; Resolution of the Board of Directors of Insurance Authority No. 2 dated 2009, with regard to the Executive Regulation for Law No. 6 of 2007; Resolution No. 58 of the Insurance Authority; Cabinet Resolution 42 dated 2009; Resolution of the Board of Directors of Insurance Authority No. 3 dated 2010, concerning Code of Conduct and Business Ethics for Insurance Companies, and Resolution No. 9 dated 2011, issued by the Board of Directors of the Insurance Authority, concerning the Instructions to License and Regulate the Control of Activities of the Companies to Manage Medical Insurance Claims.

³⁷⁶ P Ellingham and S Isgar, *Insurance and Reinsurance in United Arab Emirates: Overview* (Thompson Reuters 2016)

<[https://content.next.westlaw.com/Document/I8598550b5ebd11e498db8b09b4f043e0/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://content.next.westlaw.com/Document/I8598550b5ebd11e498db8b09b4f043e0/View/FullText.html?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)> accessed 14 November 2019.

³⁷⁷ Ibid.

can file a grievance against an insurance company with the UAE Insurance Authority.³⁷⁸ However, if the Insurance Authority is unable to resolve the dispute to the complainant's satisfaction, the only remaining recourse is to litigate before the UAE court system.³⁷⁹ Unlike many other jurisdictions, however, the UAE courts often fail to recognise contractual clauses that specify a choice of forum.³⁸⁰ Moreover, attempts to invoke a choice of foreign law in UAE court proceedings are likely to create procedural impracticalities, because the foreign law may be deemed unacceptable by the UAE courts.³⁸¹

If a party proceeds to take an insurance claim to trial, it will be brought before the Court of First Instance.³⁸² The appropriate first instance court is determined by the location where the damage or loss occurred, or where the defendant is domiciled.³⁸³ Finally, civil insurance disputes are only heard by judges; there are no juries available for insurance trials.³⁸⁴ Once a claim has been filed with the court, the defendant is served and a hearing is scheduled for a few weeks' time, at which the defendant will submit a response to the claim.³⁸⁵ The exchange of statements and documents continues in a series of short hearings for as long as the judge deems it necessary.³⁸⁶ Regarding the pre-trial discovery, the UAE Law of Evidence imposes specific rules, which oblige the parties to provide certain documents in their possession to the counterparty.³⁸⁷ Furthermore, witness evidence and testimony tends to be rather limited.³⁸⁸

In rendering a decision, the judge considers the evidence presented before the court in light of the governing statutory provisions, without regard to previous decisions.³⁸⁹ The decisions of the Court of First Instance are subject to an automatic right of appeal within 30 days, regarding issues of law or fact, and such appeals are heard by the Court of Appeal.³⁹⁰ The UAE approach fails to provide the consistency and predictability in resolving insurance disputes. This is because it is difficult to predict an outcome without clear rules on the substantive rights of

³⁷⁸ Ibid.

³⁷⁹ Ibid.

³⁸⁰ Ibid.

³⁸¹ For a law to be in a form that is acceptable to the UAE courts, it must be in the Arabic language and conform to the UAE's public morals.

³⁸² HA Shamsi, *United Arab Emirates: Insurance & Reinsurance 2017* (ICLG 2017) <<https://iclg.com/practice-areas/insurance-and-reinsurance/insurance-and-reinsurance-2017/united-arab-emirates>> accessed 14 November 2019.

³⁸³ Ibid.

³⁸⁴ Ibid.

³⁸⁵ Ibid.

³⁸⁶ Ibid (noting that first instance hearings can take up to nine months).

³⁸⁷ UAE Law of Evidence, Federal Law No 10 (15/1/1992).

³⁸⁸ Ibid.

³⁸⁹ Shamsi (n 92).

³⁹⁰ Ibid.

parties. Consistency and predictability can be reinforced by adherence to precedent.³⁹¹ In the absence of the doctrine of precedent, it may be suggested that the UAE follows suit with Pakistan by establishing specialised tribunals for the purpose of hearing these disputes. ADR centres in the UAE such as the Reconciliation and Settlement Committees, and the Family Guidance Section, generally attempt to settle disputes amicably between parties but their adjudicative function is not well-defined.

3.2.2.4 Advantages and Shortcomings of the Administrative Tribunal Model

3.2.2.4.1 Advantages

In light of the above, it may be contended that there are many advantages of using various forms of administrative tribunal to resolve sector-specific disputes, which fall within the purview of a particular agency or set of laws and regulations.

First, administrative tribunals provide faster and more cost-effective resolutions of disputes, compared to the ordinary court structure.³⁹² For instance, they help ensure that the parties engaged in a dispute within a particular sector are afforded an inexpensive and efficient option to achieve justice.³⁹³ In traditional litigation, the timeline for a case is often lengthy and the accumulation of fees along the way is significant.³⁹⁴ These factors are often exacerbated by the procedural formalities required when pursuing a case in the ordinary courts. In contrast, administrative tribunals are more flexible and informal.³⁹⁵ Theoretically, a party may therefore pursue a claim before an administrative tribunal, either with or without counsel, and the lesser procedural burden often results in time and cost savings.

Aside from the above, the individuals selected to serve as members of an administrative tribunal will possess greater technical knowledge and expertise than ordinary judges in the subject matter of the dispute.³⁹⁶ Unlike ordinary judges in the general courts, who preside over a varied docket of claims, specialised tribunals can effectively deal with the technical nuances, socio-economic considerations, and policy issues arising from administrative actions.³⁹⁷

³⁹¹ A D'Amato, 'Legal Uncertainty' (1983) 71 *California Law Review* 1, 6; A D'Amato, 'The Limits of Legal Realism' (1978) 87 *Yale Law Journal* 468, 483-484.

³⁹² Johnson (n 40). See also *Buras v. Board of Trustees*, 367 So. 2d 849, 853 (La. 1979).

³⁹³ Johnson (n 40); Yohannes and Michael (n 57).

³⁹⁴ *Ibid.*

³⁹⁵ Johnson (n 40).

³⁹⁶ *Ibid.*

³⁹⁷ *Ibid.*

Furthermore, as mentioned previously, administrative tribunals possess a significant degree of flexibility, allowing them to decide cases according to the different circumstances presented and the legal requirements involved.³⁹⁸ In many situations, these tribunals are not bound or restricted by judicial precedent when deciding cases;³⁹⁹ they are vested with the authority to consider all relevant jurisprudence, including what would otherwise be classified as binding or persuasive authority. Moreover, they can render a decision that will go against existing precedent, if the circumstances so warrant.⁴⁰⁰

In addition, administrative tribunals increase overall efficiency within both the executive and judicial sectors; in the executive domain, they help ensure the ‘efficient conduct of public administration and promote a policy of social development,’⁴⁰¹ whereas in the judicial sector, they help relieve the pressure and workload faced by the courts as a result of overburdened dockets and a backlog of pending cases.⁴⁰² Yohannes and Michael therefore note as follows:

[Administrative tribunals] could offer speedier, cheaper and more accessible justice, essential for the administration of welfare schemes involving [a] large number of small claims... The process of courts of law is elaborate, slow and costly... [the court process] is to provide the highest standard of justice; generally speaking, the public wants the best possible article and is prepared to pay for it... In administering social justice [...] the objective is not the best article at any price but the best article that is consistent with the efficient administration. Dispute must be disposed of quickly and cheaply for the benefit of the public purse as well as for that of the claimant.⁴⁰³

Finally, most administrative tribunals are created to serve particular regions or localities.⁴⁰⁴ As such, the tribunals become familiar with the nuances of the region, insofar as the economy or business customs are concerned.⁴⁰⁵ A working knowledge of the daily realities of the parties appearing before them can be instrumental in applying the law and rendering decisions.⁴⁰⁶ This implies that administrative tribunals are best placed to appreciate the values and interests of the local community.

³⁹⁸ Jha (n 37) 17.

³⁹⁹ Ibid.

⁴⁰⁰ Johnson (n 40).

⁴⁰¹ Ibid.

⁴⁰² Jha (n 37) 17.

⁴⁰³ Yohannes and Michael (n 57).

⁴⁰⁴ Johnson (n 40).

⁴⁰⁵ Ibid; Agnihotri (n 48).

⁴⁰⁶ Yohannes and Michael (n 57).

Together, these advantages work to protect party rights by creating a forum that enhances accessibility and participation for parties and ensures that an expedited form of justice can be achieved in a fair and efficient manner by a competent adjudicator.

3.2.2.4.2 Shortcomings

Despite the many advantages of the administrative tribunal structure, it would be remiss of any study not to mention some of the model's disadvantages that have been highlighted by commentators. Awareness of these disadvantages will help to give necessary insights into the debate surrounding the use of administrative tribunals and the challenges to be overcome, if the administrative model is to be presented as a more effective dispute resolution option than litigation or other ADR mechanisms, with regard to disputes over insurance cover.

First, it has been argued that the concept of the 'administrative tribunal' falls foul of the principles of the rule of law and natural justice.⁴⁰⁷ This argument stems from the fact that administrative tribunals are often the creation of the same laws that they are tasked to enforce, and the proponents of their own substantive jurisdiction and procedures.⁴⁰⁸ In theory, this could jeopardise the supremacy of ordinary courts of law in adjudicating on disputes and limit the equality of parties under the law, when they appear before administrative tribunals.⁴⁰⁹ In a similar vein, some commentators have pointed out that the quasi-judicial status of administrative tribunals violates the principle of the separation of powers, because these tribunals can perform both administrative and adjudicative functions.⁴¹⁰ In fact, administrative tribunals are basically government agencies that take the place of the judiciary by performing judicial functions. Hence, they are more suited to societies where the separation of powers is less established. Nonetheless, this argument was countered in *New York v Federal Energy Regulatory Commission*, where it was held that an administrative tribunal or agency has 'no power to act... unless and until Congress confers power upon it.'⁴¹¹ Hence, the tribunal simply administers a programme created by parliament.⁴¹² That said, it does not explain the tribunal's powers to formulate policies and rules, in order to fill in the loopholes in acts of parliament.

⁴⁰⁷ Jha (n 37) 18.

⁴⁰⁸ Ibid; Johnson (n 40).

⁴⁰⁹ Ibid.

⁴¹⁰ See EH Slattery, 'Who Will Regulate the Regulators? Administrative Agencies, the Separation of Powers, and Chevron Deference' (2015) 153 *Legal Memorandum* 1, 3-4.

⁴¹¹ 535 US 1, 18 (2002).

⁴¹² *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) 467 U.S. 837, 843 (1984).

Sales and Adler therefore remark that ‘allowing agencies to police the limits of their regulatory authority is like letting foxes... guard henhouses.’⁴¹³

Secondly, there is concern that those serving on administrative tribunals may not possess sufficient training or experience to properly render legal decisions.⁴¹⁴ This belief stems from the fact that members of administrative tribunals might not have undergone the same training or possess the same judicial spirit as judges of ordinary law courts and, in the case of expert tribunal members, may not have a legal background at all.⁴¹⁵ There is also the question whether those serving on tribunals possess the necessary independence to perform essentially judicial functions. In some instances, tribunal members may have previously served as administrators within the agency.⁴¹⁶ Furthermore, despite the tribunal’s independence, its members may be more susceptible to political interference and might not maintain the same respect for an independent outlook as ordinary judges.⁴¹⁷ This is especially problematic in the United States, whereby, as noted above, the United Supreme Court recently held that administrative law judges who are appointed by government agency staff do not have the same status as Federal or State court judges.

Finally, the way in which the proceedings of administrative tribunals are conducted presents cause for concern. For example, these tribunals are not subject to the same set of uniform procedures and precedents as the ordinary courts, which could potentially lead to arbitrary and inconsistent decisions from tribunals in different regions or areas of law.⁴¹⁸ Furthermore, some tribunals are permitted to meet in private,⁴¹⁹ engendering concerns over the transparency of their activities and possibly calling into question the fairness of their process, as well as the final award.⁴²⁰ Moreover, when allowing parties to present their case and undertaking a fact-finding investigation, administrative tribunals are not subject to strict rules of evidence, which affords them significant discretion to accept or refuse to consider evidence that would otherwise be clearly addressed by the evidentiary rules of ordinary courts.⁴²¹ Also, when

⁴¹³ NA Sales and JH Adler, ‘The Rest is Silence: Chevron Jurisdiction, Agency Deference, and Statutory Silences’ (2009) *University of Illinois Law Review* 1497, 1553.

⁴¹⁴ Jha (n 37) 18.

⁴¹⁵ Ibid.

⁴¹⁶ Johnson (n 40); Yohannes and Michael (n 57).

⁴¹⁷ Ibid.

⁴¹⁸ Yohannes and Michael (n 57).

⁴¹⁹ Johnson (n 40); Duru (n 57).

⁴²⁰ Johnson (n 40).

⁴²¹ Ibid.

rendering decisions, not all tribunals are required to rely on precedent⁴²² or provide reasons or a rationale for their decisions.⁴²³ This makes it difficult for an aggrieved party to challenge the decision of an administrative tribunal on appeal, insofar as such an appeal is permissible.

Despite the above, it must be noted that shortcomings relating to the rightness or wrongness of the actions of administrative tribunals, rather than the consequences of their actions, are not substantive in this context. This is because the predefined sets of rules and policies that govern the way in which Western states function often differs from those that govern the functioning of Islamic states. Hence, the separation of powers model may be suited to the governance of Western states, but not necessarily relevant in Islamic states such as the KSA. The fact that the quasi-judicial status of administrative tribunals violates the separation of powers principle is therefore not as important as the tribunals' potential to offer faster, less expensive, and more accessible justice.

3.3 The Profile of the Archetypal Administrative Tribunal

The primary goal of embracing the use of administrative tribunals is to improve the parties' access to justice via a competent adjudicative authority within a given sector.⁴²⁴ This means that the archetypal tribunal must ensure the following: justice is achieved through its proceedings; the tribunal system is accessible and fair; the tribunal proceedings are efficient and expedient; the rules governing tribunal proceedings are simple and easily understood by the disputing parties, and the tribunal serves its function to increase efficiency in the administration of justice and application of the governing legislation.⁴²⁵

In measuring the effectiveness of an administrative tribunal system, scholars have delineated a number of elements that need to be aligned, in order for the overall system to be just.⁴²⁶ The next subsection outlines the most relevant of these elements and the benchmark standards

⁴²² Jha (n 37) 18.

⁴²³ Ibid.

⁴²⁴ L Sossin, 'Ontario's Administrative Tribunal Clusters: A Glass Half-Full or Half-Empty for Administrative Justice?' (2012) 12(1) *Oxford University Commonwealth Law Journal* 157, 158.

⁴²⁵ E Jacobs, *Tribunal Practice and Procedure* (2016) 8
<http://www.lag.org.uk/media/43787/tribunal_practice_and_procedure_sample_chapter.pdf> accessed 14 November 2019.

⁴²⁶ T Endicott, *Administrative Law* (3rd edn, Oxford University Press 2015) 459 (these include the creation of the tribunal and appointment of tribunal members, the role of non-lawyer members, evidence, hearings, reasons for decisions, representations and advice, appeals, judicial review, administration, and independence).

within each element, gleaned from established trends in administrative tribunal systems around the globe.⁴²⁷

3.3.1 Creation of the Tribunal

Administrative tribunals are a creation of ‘empowering legislation’.⁴²⁸ Empowering legislation can be general and broad, such as a country’s constitution,⁴²⁹ or a broad administrative tribunal act.⁴³⁰ The tribunals make decisions on behalf of national and local government agencies and departments, based on the legislation.⁴³¹ However, the tribunals generally enjoy a high degree of independence and retain overall responsibility for adjudicating matters in the policy area in which they operate.⁴³² They may therefore be considered an extension of specialised government agencies, tasked with implementing and enforcing legislative policy to resolve disputes.⁴³³

Despite their role in supporting and enforcing the existing legislation, these tribunals typically have an arm’s length relationship with governmental agencies and exercise their authority in a non-partisan manner.⁴³⁴ Their jurisdiction is limited to the extent of the empowering legislation,⁴³⁵ and the scope of their authority is to interpret and apply the legislative mandates of the relevant legislation.⁴³⁶

⁴²⁷ This is not a comparative analysis, as each system has its strengths and shortcomings. Rather, this section identifies some prevailing principles necessary for a successful administrative tribunal system, so that they may be used as a point of reference in assessing the administrative committees of the KSA.

⁴²⁸ TS Kuttner, ‘Administrative Tribunals in Canada’ (*The Canadian Encyclopaedia*, 20 March 2017) <<http://www.thecanadianencyclopedia.ca/en/article/administrative-tribunals/>>, accessed 14 November 2019.

⁴²⁹ India’s administrative tribunals are constituted on the authority of amendments to Articles 323A and 323B of the Indian Constitution. Similarly, administrative tribunals in South Africa are authorised by Section 34 of its Constitution.

⁴³⁰ For example, the Adjudicative Tribunals Accountability, Governance and Appointments Act (2009) in Canada, and the Administrative Procedures Act (1946) in the US.

⁴³¹ Kuttner (n 138). In addition to resolving disputes, the tribunals may also be vested with the power to perform regulatory or licensing functions.

⁴³² JM Evans et al, *Administrative Law* (4th edn, Emond Montgomery 1995); Endicott (n 136) 451 (identifying that there are two main types of disputes heard by tribunals: ‘person-and-state’ and ‘party-and-party’).

⁴³³ Kuttner (n 138).

⁴³⁴ Ibid. See also *Sugar Mills v. Lakshmi Chand*, AID 1963 SC 677, 678 (reaffirming that tribunals are to be independent of and immune to administrative interference in India).

⁴³⁵ MB Zimmer, ‘Overview of Specialized Courts’ (August 2009) *International Journal for Court Administration* 1 <<http://www.iacajournal.org/article/download/URN%3ANBN%3ANL%3AUI%3A10-1-115882/92/>> accessed 14 November 2019 (explaining that these tribunals have a ‘narrowly focused jurisdiction to which all cases that fall within that jurisdiction are routed’); see also *Sugar Mills v. Lakshmi Chand*, AID 1963 SC 677, 678 (finding that for a body to constitute a tribunal in India, its power of adjudication must be derived from a statute or statutory rule).

⁴³⁶ B Morse and M Lavoie, ‘When Should Courts Defer to Administrative Tribunals – the Consultation Doctrine Spectrum’ (2005) <https://www.researchgate.net/profile/Bradford_Morse/publication/228188218_When_Should_Courts_Defer_to

3.3.2 Composition of the Tribunal

Tribunals may be composed of a single member, but are often presided over by three members.⁴³⁷ In the event that a tribunal is composed of a single member, that member will typically have a legal background.⁴³⁸ Where there are three tribunal members,⁴³⁹ the member with a legal background will serve as the tribunal chair. Nonetheless, what sets tribunal members apart from ordinary judges is their expertise in the given field. Pickerill asks the following question: ‘[w]hat if antitrust litigants [in the U.S.] could, instead of litigating their cases before federal courts of limited expertise, litigate them before a hall-of-fame antitrust panel composed of Richard Posner, Robert Pitovsky, and Herbert Hovenkamp?’⁴⁴⁰

Recourse to administrative tribunals therefore moves away from the deployment of legal generalists, presiding over disputes, and into a system where subject matter experts can preside over hearings. However, all tribunal members must be appointed, just like trial judges. Established jurisdictions have clear procedures and processes for appointing members of administrative tribunals, which often closely mirror those for appointing judges.⁴⁴¹

Nonetheless, non-lawyer experts have been embraced for the unique contribution that their skills and experience make to a tribunal. Mixed tribunals at state and local levels allow tribunal members with no legal training to bring their expertise and societal experiences to the table when making decisions that will affect parties’ legal rights and claims.⁴⁴² The fact that a tribunal is not a court allows those with appropriate non-legal skills to participate directly in the decision-making process, as members of the tribunal rather than simply as expert consultants

[_Administrative_Tribunals_-_The_Consultation_Doctrine_Spectrum/links/00b7d520af805988a4000000.pdf](#)> accessed 14 November 2019.

⁴³⁷ There is some debate over the ideal number of tribunal members. However, there is a consensus that having multiple tribunal members is advantageous to the adjudication process, in that different tribunal members bring different skills, perspectives, and experiences to the decision-making process and increase the potential for decisions to be balanced and consistent. N Wikeley, *Expertise and the Role of Members* (Bristol Centre for the Study of Administrative Justice 2001) 74, 78.

⁴³⁸ Ibid.

⁴³⁹ The optimal size of the majority of tribunals has been determined as three members, which allows for an ideal mix of experience. See The Law Commission, Consultation Paper No. 182 & The Scottish Law Commission, Discussion Paper No. 134, 70 <http://www.lawcom.gov.uk/docs/cp182_web.pdf> accessed 14 November 2019.

⁴⁴⁰ Pickerill (n 53) 1605.

⁴⁴¹ For example, in the UK, tribunal judges are appointed by the Judicial Appointments Commission, which is the same Commission that appoints High Court Judges. Endicott (n 136) 459.

⁴⁴² <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1372&context=alr>>, accessed 14 November 2019.

or witnesses.⁴⁴³ This renders the tribunal more accessible to the parties, by reducing the need to rely on expert witnesses to make out their case.⁴⁴⁴ As one judge aptly notes:

One of the strengths of the tribunal system as it has been developed... is the breadth of relevant experience that can be built into it by the use of lay members to sit with members who are legally qualified... its integrity is not compromised by the use of specialist knowledge or experience when the judge or tribunal member is examining the evidence.⁴⁴⁵

When determining whether a potential tribunal member is suitable for appointment, there are a number of core skills that are considered. These core competencies fall into several broad categories, such as law and procedure, equal treatment, communication, conduct of hearing, evidence, and decision-making.⁴⁴⁶ The tribunal member should therefore have a comprehensive understanding of the merits review and adjudicative process, and its place in the public administration of sector-specific legislation.⁴⁴⁷ In addition, the member must have an understanding of the role of the administrative process, a clear conception of procedural fairness, a working knowledge of the rules of evidence, and the ability to judiciously exercise discretion in presiding over a case.⁴⁴⁸ Also, the tribunal member must possess the ability to interpret the empowering legislation, apply the relevant laws and administrative principles, make reasoned decisions, and evaluate the evidence.⁴⁴⁹

Besides the set of basic skills required of tribunal members on appointment, many regimes also endeavour to provide them with ongoing professional development and training, so that they continue to refine and develop their skills.⁴⁵⁰ As recommended by the Australian Law Reform Commission:

Every... review tribunal should have an effective professional development program with stated goals and objectives. This should include access to induction and orientation programs, mentoring programs, and continuing education and training programs. In particular, training in administrative law principles relevant

⁴⁴³ For example, in Australia, non-legal tribunal members are typically specialists in the subject matter of the sector in which the tribunal is constituted. They may therefore be doctors or other medical practitioners, accountants, tax advisors, economists, engineers, town planners, or businessmen, <<http://www.bdl.com.au/litigation-disputes-resolution/comparing-courts-to-tribunals.html>>, accessed 14 November 2019.

⁴⁴⁴ Wikeley (n 147) 74.

⁴⁴⁵ *Gillies v. Work and Pensions Secretary (Scotland)* [2006] UKHL 2 [22].

⁴⁴⁶ Judicial Studies Board, *Competence Framework for Chairmen and Members of Tribunals* (2002) <www.jsboard.co.uk/publications.htm> accessed 14 November 2019.

⁴⁴⁷ Administrative Review Council, *Better Decisions: Review of Commonwealth Merits Review Tribunal* (Report No 39, Australian Government Publishing Service, 1995) 71-73.

⁴⁴⁸ *Ibid.*

⁴⁴⁹ *Ibid.*

⁴⁵⁰ Law Commission (n 149).

to decision making should be made available to members of tribunals who do not have legal qualifications.⁴⁵¹

Such training would ideally include effective strategies for managing and monitoring training programmes and tailored programmes for the induction of new tribunal chairs and members.⁴⁵²

3.3.3 Procedural Rules of the Tribunal

There is great variability among the procedures that are prescribed and adopted for use by administrative tribunals.⁴⁵³ In part, this stems from the fact that not all tribunals are the same and as such, they may have different requirements.⁴⁵⁴ Administrative tribunals borrow many of their procedural rules from ordinary courts of law,⁴⁵⁵ or may have a specific governing legislation.⁴⁵⁶ This means that in numerous jurisdictions, these tribunals are vested with the same authority as the courts; requiring parties to attempt to settle their disputes, prior to engaging in lengthy hearings.⁴⁵⁷ The emerging trend in governing the procedures of administrative tribunals is to enact a governing act that sets forth a common and uniform set of rules to be followed.⁴⁵⁸

Nevertheless, it is important to remember that tribunals are not courts.⁴⁵⁹ In fact, tribunals were specifically created as an alternative to the courts and to keep matters within a specific sector outside the ordinary judicial structure.⁴⁶⁰ Thus, when it comes to developing procedural rules for tribunals or transposing the rules of the courts onto them, it is important that some degree of flexibility is preserved.⁴⁶¹ However, this flexibility must not obstruct the tribunal from complying with the principles of administrative and natural law.⁴⁶² Each party, whether bringing their case before a court or a tribunal, ‘has the right to the observance of the principles

⁴⁵¹ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (ALRC Report No 89, Canberra, 2000) R 9.

⁴⁵² Judicial Studies Board (n 156).

⁴⁵³ Law Commission (n 149).

⁴⁵⁴ *Ibid.*

⁴⁵⁵ *Ibid.*

⁴⁵⁶ For example, The United Kingdom’s Tribunals, Courts & Enforcement Act of 2007.

⁴⁵⁷ Endicott (n 136) 463.

⁴⁵⁸ For example, this has been the case with the issuance of the United States Administrative Procedure Act and the United Kingdom’s Tribunals, Courts & Enforcement Act.

⁴⁵⁹ Law Commission (n 149).

⁴⁶⁰ *Ibid.*

⁴⁶¹ *Ibid* (noting that tribunals ‘should only be as formal and complex as is necessary to ensure that rights, interests, or legitimate expectations are fairly determined’).

⁴⁶² *Ibid.*

of natural justice by any tribunal... which has the power to make a determination in respect of that person's rights, obligations, or interests, protected or recognised by law.⁴⁶³

Generally speaking, the flexibility and informality of the administrative tribunal process can be addressed through the empowering legislation and its accompanying rules. They may contain flexible hearing provisions, measures that minimise legal technicalities, and the tribunals' broad investigative powers.⁴⁶⁴ Additionally, it is common for the empowering legislation to confer the power to determine the tribunal procedures onto the tribunals themselves.⁴⁶⁵

When considering the areas to be addressed by procedural rules, the following constitute necessary provisions: the conduct of hearings, adequate notice, disclosure, the opportunity to make representations, and the calling and examining of witnesses.⁴⁶⁶ With regard to hearings, the rules must provide for what constitutes an adequate hearing. However, most systems simply provide that 'the principles of natural justice' must be observed; leaving tribunals to determine on a case-by-case basis, the extent to which hearings must be conducted to ensure that the parties' rights to justice are preserved.⁴⁶⁷

As for the initiation of proceedings, the tribunals must also have rules that provide any party whose rights or interests are likely to be affected with adequate notice of the pending case; thereby affording them adequate time to prepare and present their case.⁴⁶⁸ Once the case has been initiated and pleadings and supporting evidence have been exchanged, the parties must then be afforded the opportunity to make representations before the tribunal. Such representations may take the form of written motions or bench memoranda, or oral hearings, at which the parties may present oral arguments or a witness testimony.⁴⁶⁹ Each party must also be given a fair opportunity to respond to the introduction of any adverse arguments or materials.⁴⁷⁰

⁴⁶³ New Zealand Bill of Rights Act 1990 s 27 (1) (a sentiment reflected by the laws of other nations).

⁴⁶⁴ Law Commission (n 149).

⁴⁶⁵ Ibid. One notable disadvantage of this approach is that different tribunals may establish different procedures, leading to the disparate treatment of parties.

⁴⁶⁶ Ibid.

⁴⁶⁷ Ibid.

⁴⁶⁸ See Legislation Advisory Committee, *Guidelines on Process and Content of Legislation: 2001 Edition and Amendments* (Wellington, 2007) 126.

⁴⁶⁹ Law Commission (n 149).

⁴⁷⁰ W Wade and C Forsyth, *Administrative Law* (9th edn, Oxford University Press 2004) 518.

3.3.4 Decision-Making by the Tribunal

When it comes to decision-making, the tribunal is autonomous and immune from direction by the agency that created it or from the agency chair, concerning the way in which it should decide a particular case.⁴⁷¹ Tribunals require some procedural governance regarding the grounds on which their decisions are based and must present the underlying reasons for their decisions.

3.3.4.1 Evidence

Tribunals have broader discretion than the courts over the evidence that they may accept in deciding a dispute,⁴⁷² because they are generally not confined by the laws of evidence that apply to the ordinary courts.⁴⁷³ These modified rules allow administrative tribunals to accept evidence that would otherwise not be admissible in an ordinary court.⁴⁷⁴ For example, under one legislative provision, a tribunal has the power to ‘receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively’ with the case at hand, ‘whether or not it would be admissible in a court of law.’⁴⁷⁵ In some instances, tribunals may be governed by multiple statutes or rules of procedure and these rules must be reconciled.⁴⁷⁶ However, tribunals maintain the hallmark rule of evidence that for particular material or testimony to be considered in resolving a dispute, it must be of logical probative value to the case.⁴⁷⁷

If a tribunal makes adjudicative decisions based on testimony and evidence, like a normal court, it will tend to function more like a court. This may then beg the question of why a tribunal should be created, rather than merely appointing more judges. As previously noted, procedures before a tribunal are generally less formal than those that take place before a court. Nonetheless, the subsequent decisions must ultimately be based solely upon cogent and probative evidence.

⁴⁷¹ Evans (n 142).

⁴⁷² Jacobs (n 135) 8.

⁴⁷³ Endicott (n 136) 462; *Metropolitan Properties Ltd v. Lannon* [1969] 1 QB 577, 603 (‘members [of tribunals] are not restricted to the evidence adduced before them, they are free to draw upon their cumulative knowledge and experience of the matter in hand’); *Sugar Mills v. Lakshmi Chand*, AID 1963 SC 677, 678 (India).

⁴⁷⁴ Law Commission (n 149).

⁴⁷⁵ Commissions of Inquiry Act 1908, section 4B(1) (New Zealand).

⁴⁷⁶ For example, the Ontario Child and Family Services Review Board gets its powers from the Child and Family Services Act (1990), the Intercountry Adoption Act (1998) and the Education Act (1990), while the Conservation Review Board is empowered only by the Ontario Heritage Act (1990).

⁴⁷⁷ Law Commission (n 149).

This is because the decisions of administrative tribunals can be final and not subject to appeal, unlike those of courts.

3.3.4.2 Precedent

Tribunals have the capacity to both rely on and create precedential decisions, which will further the development of public law and assist future parties with protecting or asserting their rights.⁴⁷⁸ For administrative tribunals to be predictable and consistent as an adjudicatory system, it is essential that they incorporate both precedent and institutional legitimacy into their decision-making process.⁴⁷⁹

By publishing their opinions, even where these are anonymised to protect the identities of the parties involved, the public is enlightened on what the law consists of and its application in practice,⁴⁸⁰ thereby enhancing predictability. Over time, these published decisions create a consensus on how the law is applied; for instance, when interpreting a particular contractual provision or hearing a party's defence.⁴⁸¹ This consensus can help deter parties from bringing frivolous or baseless suits and help meritorious claims build their cases.⁴⁸²

Furthermore, by publishing opinions that contain tribunals' reasoning and interpretation of the law, the corresponding legal system will be afforded the ability to identify changes in the perceptions of legal norms over time and the flexibility to respond.⁴⁸³ In addition to allowing the legal system itself to adapt to changing norms, the publication of opinions brings the attention of the public and legislature to the tribunals' position on current laws.⁴⁸⁴ Should the public or agency involved disagree with the interpretations of these tribunals, or feel that the legislation is not achieving its intended purpose, the legislature will subsequently be able to revisit the law and make amendments through the legislative process.⁴⁸⁵

⁴⁷⁸ Pickerill (n 53) 1619.

⁴⁷⁹ Ibid, 1620.

⁴⁸⁰ Ibid; DM Engel, 'Legal Pluralism in an American Community: Perspectives on a Civil Trial Court' (1980) 1980 *American Bar Foundation Research Journal* 425, 435-36; WB Weinstein, 'Some Benefits and Risks of Privatization of Justice through ADR' (1996) 11 *Ohio State Journal on Dispute Resolution* 241, 249 ('For law to serve its function as giving expression to enforceable behavioural norms, it must be made publicly for all to see... Members of the public must know what the law is...').

⁴⁸¹ Pickerill (n 53) 1620.

⁴⁸² Administrative Review Council (n 157) 106.

⁴⁸³ This is often reflected in opinion *dicta*, in which a tribunal will address an outdated precedent and articulate why that precedent should no longer apply. This chronicled development of legal norms assists tribunals by providing them with current interpretations for comparison, on which to base their instant opinions.

⁴⁸⁴ Law Commission (n 149).

⁴⁸⁵ Pickerill (53) 1621.

3.3.4.3 Decision Rationales

Jurisdictions differ over whether an administrative tribunal is required to present reasons to support its decisions.⁴⁸⁶ However, there is a growing trend towards requiring tribunals to provide the rationale for their decisions.⁴⁸⁷ Various legislatures recognise that a failure to impose this requirement would result in administrative tribunals being able to circumvent effective judicial review⁴⁸⁸ and would inhibit the transparency of tribunal proceedings.⁴⁸⁹ Furthermore, the requirement for tribunals to give the reasons underpinning their decisions coincides with the policy reasons for making tribunal decisions public and assists with the development of precedent.⁴⁹⁰

In terms of what must be included to support a judicial decision, the consensus is that the reasoning must be intelligible and should address the substantial points that have been made.⁴⁹¹ Particularly where non-legal tribunal members are involved, it is important to understand how they view the law's applicability in a given case and their role as adjudicators in the legal system. However, in practice, few members of administrative tribunals write individual opinions containing their deliberations as decision-makers; instead, this task is often delegated to the chairman of the tribunal, who generally has a legal background.⁴⁹²

3.3.4.4 Appeals and Judicial Review

The possibility to appeal tribunal decisions and obtain judicial review is also an important aspect of the administrative tribunal system. While generally speaking, the decisions of tribunals are final, the empowering legislation may enable parties to challenge these decisions on appeal.⁴⁹³ In some jurisdictions such as Saudi Arabia and Pakistan, tribunal decisions may be appealed, although they narrowly limit the grounds of appeal.⁴⁹⁴ Nevertheless, the

⁴⁸⁶ Wade and Forsyth (n 180) 522.

⁴⁸⁷ Ibid.

⁴⁸⁸ Endicott (n 136) 463-64.

⁴⁸⁹ Law Commission (n 149).

⁴⁹⁰ Endicott (n 136) 463-64.

⁴⁹¹ See *In Re Pyser and Mills' Arbitration* [1964] 2 QB 467, 478.

⁴⁹² KK Latta, 'The Role of Non-Lawyers on Administrative Tribunals: What Lay Members Think about Law, Lawyers, and Their Own Participation in Alaska's Mixed Administrative Tribunals' (2014) 31(1) *Alaska Law Review* 37, 38.

⁴⁹³ Legislation Advisory Committee (n 178) 126.

⁴⁹⁴ The Saudi administrative tribunals in the insurance sector are assessed below.

importance of appeals should not be ignored. Appeals serve to correct errors, and to assess and improve the decisions of tribunals and other decision-makers.⁴⁹⁵

3.3.4.5 Enforceability of Tribunal Decisions

When it comes to the enforceability of administrative tribunal decisions, they are routinely accorded the same weight as decisions issued by ordinary courts. The only difference is that tribunals lack direct powers of enforcement and, in the cases where this is needed, their decisions are enforced in the ordinary courts.⁴⁹⁶ However, the enforcement of tribunal decisions varies, depending on the administrative regime. In some systems, administrative tribunals are empowered to enforce their own decisions, either by acting as adjudicative bodies, or through the regulatory and licensing bodies of the agency or department with which they are connected.⁴⁹⁷ A good example is the Saudi Arabian Monetary Agency (SAMA) which regulates the insurance industry (except the health insurance sector), receives appeals from the IDCs, and then issues and enforces its decisions.

As noted above, SAMA uses a range of sanctions that are tailored to the misconduct of the insurer. It may appoint consultants to provide consultation to the company over the management of its activities in attempting to cure the issue. It may suspend any company board member or employee who is proven to be responsible for a violation. It may restrict or prevent the company from accepting new shareholders, investors, or members in any of its insurance activities. It may compel the company to take any other measure that it deems necessary for resolving a violation. It may request that the company be dissolved, impose a fine of up to one million Saudi riyals and an imprisonment sentence of up to four years. Thus, SAMA may impose an imprisonment sentence as a last resort.

3.3.5 How the IDC Compares to the Archetypal Administrative Tribunal

The IDC system in the KSA represents a hybrid dispute resolution structure. The procedures and structures of the model stem from principles of administrative law. However, instead of

⁴⁹⁵ Law Commission (n 149) 117 (internal citations omitted).

⁴⁹⁶ *R v. Secretary of State for the Home Department ex p Saleem* [2001] WLR 443, 457.

⁴⁹⁷ Kuttner (n 138).

resolving issues between parties and the State, IDC Committees resolve disputes between private parties, viz., the individual policyholder and the insured.

The IDC is a forum that was specifically created by SAMA to resolve insurance disputes. It is a quasi-judicial body, in that it exists outside the Saudi court structure, but serves an adjudicatory purpose. Proceedings before the IDC are more formal than other types of ADR. However, they are arguably less formal than traditional litigation before the Saudi courts. In the KSA, if a party wishes to resolve an insurance dispute in a ‘litigation’ forum, the dispute must be submitted to an IDC. This committee has exclusive jurisdiction over such claims and participation is not voluntary. This section compares the IDC to the profile of the efficient administrative tribunal mapped out above.

3.3.5.1 Creation by the Saudi Arabia Monetary Authority (SAMA)

The creation of the IDC by SAMA marks the establishment of an essentially ad hoc tribunal system within the KSA’s overall adjudicatory regime. Article 20 of the CICCL provides that:

One committee or more shall be formed by an Edict of the Council of Ministers on a recommendation of the Minister of Finance. Such committee or committees shall consist of three specialized members, one of whom, at least, must be a legal consultant. The committee shall undertake to resolve the disputes arising between insurance companies and their customers...⁴⁹⁸

There are a few important items to be gleaned from Article 20. First, the empowering legislation is the CICCL. This is a sector-specific statute with a scope that is limited to the insurance industry. There is no overarching tribunal law to which this sector-specific agency is subject. Second, the IDC is vested with both ‘party-and-party’ and ‘party-and-State’ authority. This reinforces the IDC’s quasi-judicial nature, in the sense that it adjudicates disputes, but also highlights the IDC’s administrative nature with regard to its role in enforcement. Finally, the law provides for the creation of ‘one or more’ Committees. In practice, these have been regionally established, with three Primary Committees assuming jurisdiction over different territories of the Kingdom. However, should the need arise, there is the option of creating additional committees.

3.3.5.2 Composition of the Committee

⁴⁹⁸ CICCL, Article 20.

When determining the composition of the IDC Committees, Article 20 of the CICCL again provides preliminary guidance: Each Committee will be composed of three members and one of these must be a legal consultant. It should be noted here that the language used is ‘legal consultant’, as opposed to an attorney or judge.⁴⁹⁹ Meanwhile, the only guidance provided with regard to the other two members is that they should be ‘specialised’ members. It is uncertain whether this means that they should have a background in insurance, given that the rules are silent on the credentials and expertise that they should possess, in order to qualify as ‘specialised’ members.

Similar to other administrative tribunal systems, Committee members are appointed for terms of three years. There is no guidance provided on the vetting and appointment process that is undertaken by SAMA; thereby raising questions about the independence of the Committee. The appointment of Committee members by the administrative agency may easily be viewed as the exercise of political influence. It also raises the question of whether specialised Committee members share the same status as ordinary court judges, or whether they may simply be considered as SAMA employees or independent contractors, engaged by the agency.

It is striking that there are no provisions to address the impartiality and competence of Committee members. Unlike trial judges, who are subject to strict rules on conflicts and recusal, there are no comparable provisions governing Committee members. Given that the disputes are primarily between insurance companies and their policyholders and concern isolated events, the potential for bias may be modest. However, over time, in dealing with the same insurance companies repeatedly, such positions may develop, leading to the problem of ‘repeat-player effect’.⁵⁰⁰

Despite the lack of provisions for this issue in the Working Rules, the Law of Procedure of *Shariah* Courts may arguably be applied, specifically its disqualification and recusal rules.⁵⁰¹ This argument is premised on the assumption that in the eyes of the law, Committee members are comparable to judges, although there is nothing to affirmatively support this. As a result, it is essential that the KSA either incorporates references to its provisions governing the conduct

⁴⁹⁹ However, the researcher was unable to find any member of an IDC Committee with a legal background who was not a judge. Thus, all members surveyed in this study (results are discussed in Chapter 6) are judges.

⁵⁰⁰ For an analysis of the problem, see AJS Colvin, ‘An Empirical Study of Employment Arbitration: Case Outcomes and Processes’ (2011) 8(1) *Journal of Empirical Legal Studies* 1, 1-23; L Bingham, ‘Employment Arbitration: The Repeat Player Effect’ (1997) 1 *Employee Rights and Employment Policy Journal* 189, 189-220.

⁵⁰¹ Law of Procedure of *Shariah* Courts issued by Royal Decree No. M/21 of 20 Jumada I, 1421 (19 August 2000), Articles 90 to 96.

of judges or formulates additional guidance on the role of Committee members in presiding over disputes.

In addition to the need to develop guidance on how Committee members should operate once appointed, there is also a noticeable lack of guidance on who may be eligible for appointment to a Committee. Unlike judges, who must meet a set of eligibility criteria, the only guidance provided with regard to Committee members is that they are to be specialised, and at least one must be a legal consultant, rather than a judge or lawyer. In practice, this becomes problematic. For instance, it is uncertain whether there is an objective level of experience or education that must be attained, prior to becoming eligible for appointment, such as a university degree or a specific minimum number of years of industry experience. Additionally, it is uncertain whether consideration is given to socio-economic factors, such as gender, criminal history, or any vested financial interests in the insurance sector. These uncertainties still exist, because there have been no public statements about the core competencies required for tribunal members. It is therefore important to promulgate regulations or guidance on the basic prerequisites for consideration in the appointment of IDC members.

By creating appointment standards, the parties will be assured that their Committee is competent to hear their case; thereby promoting their confidence in the process and discouraging them from opting out in favour of other forms of ADR, such as mediation or arbitration. Furthermore, in the event that tribunal members are able to make a career out of their appointment – assuming that appointments are not limited to a single three-year term but are subject to renewal – consideration should be given to ongoing training for professional development and support for Committee members. Such training should address developments within the sector, legislative changes that affect parties' rights or that bear upon the subject matter of disputes, and advancements in the overall regime of the administrative agency.

3.3.5.3 Procedural Rules of the IDC

Articles 2 and 3 of the Working Rules establish the jurisdiction and procedural rules of the IDC. Under Article 2, the Primary Committees have jurisdiction over all insurance disputes and complaints brought by a complainant with a capacity or interest in the outcome of the proceeding. Thus, the jurisdiction of the IDC is limited to hearing insurance disputes and does not extend to outside contractual or collection matters. Article 6 further provides that the exercise of jurisdiction over insurance disputes is divided according to territory. The complaint

must be brought before the appropriate Primary Committee within the claimant or defendant's territorial jurisdiction, depending on the circumstances of the dispute. Article 3 sets forth the form and process through which the proceedings may be commenced, including all of the required pleading details. It fulfils the notice and disclosure requirements of the tribunal's empowering legislation.

In terms of the transparency of proceedings, the Committees are required to hold hearings in the presence of the Committee members and parties.⁵⁰² However, the rules do not indicate whether the hearings are otherwise open to the public. For situations on which the Working Rules are silent, Article 12 provides that 'the provisions of the Law of Procedure of *Shariah* Courts and the Criminal Procedures Law, as the case may be, shall be applied...'⁵⁰³

3.3.5.4 Decision-Making by the IDC

As noted above, there are three areas of concern relating to Committee decision-making. These include the consideration of evidence, the consideration of precedent, and the content of the Committee's opinion. Each of these areas is explained in more detail below.

3.3.5.4.1 Evidence

Like many other administrative tribunal systems, the Working Rules provide the IDC with broader flexibility in considering evidence. Notably, Article 7 of the Working Rules provides that '[a]ll types of evidence may be used before the Committees, including electronic and computer data, telephone recordings, fax correspondence, emails or SMS messages.' This provision of the Working Rules trumps the traditional, more formal rules of evidence that apply to the ordinary courts, as embodied in the Law of Procedure. However, the Working Rules could be further improved by adding the qualifier that all evidence considered must be reliable, cogent, and have probative value to the matter at hand.

3.3.5.4.2 Precedent

Under Article 9 of the Working Rules, the IDC is instructed to decide cases 'in accordance with the laws and regulations regulating the nature of the dispute, the applicable rules and rulings reached at by the judiciary and the comparative jurisprudence for settling insurance

⁵⁰² Working Rules, Article 4.

⁵⁰³ Ibid, Article 12.

disputes and violations.’ While it is laudable that the IDC regime embraces the doctrine of precedent to achieve efficient justice and protect party rights, the provision on the use of precedent is in fact quite vague. It essentially states that members of the Committee may consider all sources of law that are applicable to the dispute, both domestic and comparative. However, it does not provide for any hierarchy or priority of these sources. Some delineation of binding or mandatory versus persuasive authority, along with an established order of authority, will therefore be necessary for the system to generate predictable and consistent decisions. Without such guidance, each dispute brought before the Committee will essentially be resolved in an ad hoc manner.

3.3.5.4.3 Decision Rationale

The Working Rules provide little guidance to the Committees on the content that is required for their decisions. Again, in turning to the Law of Procedure, there is little to be found on what the final decision should contain. Nevertheless, it may be argued that a decision should lay out the issues considered by the tribunal, along with a well-reasoned explanation of the law applied and the route taken by the tribunal to reach its conclusions. Article 170 of the Law of Procedure provides that ‘[i]f the wording of the judgment is vague or confusing, the litigants may request an interpretation from the court that rendered the judgment.’⁵⁰⁴ However, this does not shed light on what should be routinely included in a decision.⁵⁰⁵ The Working Rules therefore need to be revised to include the basic elements that all committee decisions should contain.

3.3.5.4.4 Appeal and Judicial Review

The Working Rules permit the appeal of Primary Committee decisions. The CICCL and its implementing regulations provide for the creation of an Appeals Committee, in addition to the Primary Committee of the IDC within this dispute resolution system.⁵⁰⁶ Article 8 of the Working Rules provides that ‘[t]he Appeal Committee shall have the jurisdiction to settle litigants’ grievances submitted by the persons concerned against the decisions issued by the Primary Committees.’ Prior to the issuance of these Working Rules, appeals against IDC

⁵⁰⁴ Law of Procedure of *Shariah* Courts, Article 170.

⁵⁰⁵ 102 decisions of the IDC Committees were analysed by the researcher. See Appendix I. The Committees do not use the same format in presenting their decisions, and the researcher was unable to identify any features that the decisions are required to have. Also, the Committees do not provide a well-reasoned explanation of the law and they do not cite precedent. They simply state the conclusion and the route taken by the Committee to reach the conclusion.

⁵⁰⁶ CICCL, Articles 20 and 22.

decisions were brought before the Board of Grievances. However, under the current regime, the Appeal Committee has exclusive jurisdiction over these appeals.

Nonetheless, it is noted in Chapter 2 that Article 13(b) of the Law of the Judiciary, 2007 provides that the Board of Grievances has jurisdiction over the decisions of all quasi-judicial committees, except the Committee for the Resolution of Security Disputes, the Banking Dispute Settlement Committee, and the Tariff Committees; Article 20 of the CICCL provides that IDC decisions may be appealed before the Board of Grievances; and Article 8 of the Working Rules limits the jurisdiction of the Appeal Committee to examining decisions in lawsuits where the amount decided is less than 50,000 Saudi riyals.

Procedurally, any grievance against a decision of the Primary Committee must be submitted to the Appeal Committee for consideration, within 30 days of delivering the decision.⁵⁰⁷ However, the Working Rules are silent on the available grounds for appeal. Assuming that the Law of Procedure applies in this instance, Article 179 provides that ‘[a]ll judgments are appealable.’⁵⁰⁸ This then essentially creates an automatic right of appeal for the losing party in any insurance dispute. However, such an appeal is not a *de novo* review of the case on its merits. Article 180 of the Law of Procedure requires the objection brief (application for appeal) to contain ‘the grounds for the objection, the requests of the objector, and the reasons in support of the objection.’⁵⁰⁹ Under these circumstances, the appellant must specifically plead the reason why they believe the Primary Committee erred in rendering its judgment. What is noticeably absent from the Law of Procedure is any clear delineation of the grounds for objection and appeal. For the appeal system to be successful in the insurance dispute sector, it is important that the parties are clearly informed of the grounds on which they can appeal a decision, as well as the scope of the review upon appeal.⁵¹⁰

On the matter of judicial review, the Working Rules are silent, and one must again consult the Law of Procedure of the *Shariah* Courts. Article 3 states: ‘[a]ny procedure in a proceeding validly applied under laws in force shall remain valid.’⁵¹¹ Thus, if a Primary Committee validly applies the law to resolve a dispute brought before it, the proceedings will be upheld by the

⁵⁰⁷ Ibid, Article 9(2).

⁵⁰⁸ Law of Procedure of *Shariah* Courts, Article 179.

⁵⁰⁹ Ibid, Article 180.

⁵¹⁰ In the Appeal Committee decisions analysed in Chapter 5, the Committee does not discuss the grounds on which the Primary Committee’s decision was appealed, as well as the scope of the Appeal Committee’s review.

⁵¹¹ Ibid, Article 3.

courts and the decision will remain valid. However, Article 6 of the Law of Procedure also provides as follows:

[a]n action shall be invalid if declared null and void by a provision hereunder or is so flawed that the purpose thereof is not served. Nonetheless, it shall not be adjudged invalid, notwithstanding such a provision, if it is proven that the purpose of the action is definitely achieved.⁵¹²

3.3.5.4.5 Enforceability of IDC Decisions

The Working Rules are silent on the issue of enforcement. This is problematic because, while the decisions issued by courts and arbitrators are subject to enforcement under Enforcement Law, Article 2 of this Law expressly excepts decisions rendered over administrative matters.⁵¹³ This begs the question of whether committee decisions are in fact administrative decisions. If the Enforcement Law does not apply, then, the provision on the attachment and execution of the Law of Procedure may allow a party to fulfil a judgment, insofar as it can provide a remedy.⁵¹⁴ For parties to enforce decisions effectively, it is essential that they are clear on the procedures that are available to them, in order to compel the compliance of adverse parties.

However, it may be contended that SAMA enforces IDC decisions because SAMA has supervisory and technical control over all insurance activities within the Kingdom, sanctions insurance companies that violate provisions of the law, and hears appeals against the decisions of the Primary Committees.

3.4 Is the Administrative Model More Effective than Litigation?

As noted in Chapter 1, the analysis of insurance law in this thesis focuses on the compensation of consumers who are confronted with an adverse determination of their insurance cover. In general, consumers, and other policyholders, have few means of challenging an insurer's adverse determination.⁵¹⁵ This is compounded by the fact that insurance policies are purchased by consumers to protect themselves against significant risks, and when such risks arise,

⁵¹² Ibid, Article 6.

⁵¹³ Enforcement Law issued through Royal Decree No. M/53 of 13 Sha'ban 1433 Hejra (3 July 2012).

⁵¹⁴ Law of Procedure of *Shariah* Courts, Arts 196-229.

⁵¹⁵ See D Schwarcz, 'Redesigning Consumer Dispute Resolution: A Case Study of the British and American Approaches to Insurance Claims Conflict' (2009) 83 *Tulane Law Review* 735, 750. See also JW Stempel and ES Knutsen, *Stempel and Knutsen on Insurance Coverage* (4th edn, Wolters Kluwer 2019) chapter 2.

consumers usually lack the financial resources to challenge insurers.⁵¹⁶ Conversely, denying policyholders' claims increases the revenue of insurers. Although this may be detrimental to an insurer's reputation,⁵¹⁷ there are equally numerous factors that could prevent such an outcome; namely, the malleability of the language used in insurance contracts, the lack of comprehensive information to consumers, and poor handling of insurance claims.⁵¹⁸ Where the underlying contract is not balanced, it is important for the consumer to be able to credibly threaten insurers with a form of legal recourse.⁵¹⁹

Litigation has historically been a form of legal recourse, which readily provides a comprehensive set of potential remedies to policyholders. These include punitive damages, attorneys' fees and expenses, and damages for emotional stress.⁵²⁰ Liability or third-party insurance has historically been linked with litigation, because the former seeks to protect the policyholder from the risk of liabilities imposed by the latter.⁵²¹ In short, it protects the policyholder in the event of litigation, according to the cover offered by the insurance policy. Hence, the insurer is required to defend the policyholder if a claim is made against the latter, with the legal costs of the defence being borne by the insurer and no effect on the limits of the policy, unless the insurance contract specifies otherwise. It follows that without liability insurance and litigation, many innocent victims of tort or negligence would not be compensated.⁵²² The decision to litigate is not only motivated by the need to establish fault or negligence, but also to compel the insurer to pay.⁵²³

⁵¹⁶ See LT Martin and JE Luoto, 'From Coverage to Care: Strengthening and Facilitating Consumer Connections to the Health System' (2015) 5(2) *Rand Health Quarterly* 1, 1-6; S Corlette et al, 'Before and After the Affordable Care Act: Consumers' Coverage Experience through the Eyes of State Consumer Assistance Programs' (2015) *The Center on Health Insurance Reform Letter* 1, 6-8. Born notes that to ensure good faith and fair treatment, many states in the United States have passed regulations that prohibit bad faith practices on the part of insurance companies and many non-profit organisations provide educational resources to consumers to promote better financial decision-making and improve their ability to select the appropriate policy. See P Born, 'Financial Consumer Protection in the United States' in Chen T (ed), *An International Comparison of Financial Consumer Protection* (Springer 2018) 391-393.

⁵¹⁷ See MJ Comer, *Investigating Corporate Fraud* (Gower 2003) 185. See also, B Klein and KB Leffler, 'The Role of Market Forces in Assuring Contractual Performance' (1981) 89 *Journal of Political Economics* 615.

⁵¹⁸ See Schwarcz (n 225) 741.

⁵¹⁹ The consumer in this case has already purchased a policy from the insurer and paid insurance premiums. Hence, when confronted with a loss that is caused by a peril that is covered by the policy, the aggrieved consumer can only enforce the insurer's promise to pay for such a loss in order to be compensated.

⁵²⁰ T Baker, 'Constructing the Insurance Relationship: Sales Stories, Claims Stories, and Insurance Contract Damages' (1994) 72 *Texas Law Review* 1395, 1423-1426. See also GL Priest, 'The Current Insurance Crisis and Modern Tort Law' (1987) 96 *Yale Law Journal* 1521, 1546-1547 (arguing that the remedies provided by litigation are actually excessive and emotional distress damages are unnecessary).

⁵²¹ See SG Gilles, 'The Judgment-Proof Society' (2006) 63 *William & Mary Law Review* 603, 610.

⁵²² *Ibid.*

⁵²³ T Baker, 'Liability Insurance as Tort Regulation: Six Ways that Liability Insurance Shapes Tort Law in Action' (2005) 12 *Connecticut Insurance Law Journal* 1, 4.

Litigation is therefore important, because although it is a rights-based process option, it serves the public good and furthers the interests of the general public by ensuring that policyholders who have suffered a loss that is covered have a means of seeking relief from an insurer. Nonetheless, due to the shortcomings of litigation, it has been argued that expenses and unpredictability may be avoided or reduced by channelling disputes into an administrative system.⁵²⁴ In light of this argument, the present chapter critically examines the administrative tribunal model and determines whether it is a more effective avenue than the litigation-based model for resolving disputes over insurance cover. It uses five criteria, namely cost and duration, *Shariah*-compliance, impartiality, flexibility and predictability.

3.4.1 Cost and Duration

Schwarcz argues that although litigation provides a comprehensive set of potential remedies, in reality, it offers little compensation to aggrieved policyholders.⁵²⁵ Hence, the problem with litigation lies not with the remedies that it affords, but with the path to obtaining those remedies, or the ‘process of litigation’.⁵²⁶ Also, Sykes concluded his study with the contention that litigation is inefficient and works purely in favour of the insurer, because it is slow and unpredictable, which does not favour aggrieved policyholders, who may be in desperate need of financial compensation.⁵²⁷

Abraham on his part notes that most insurance policies are based on sequential and contingent contracts, which do not clearly specify the parties’ rights or obligations when a risk arises.⁵²⁸ This explains why insurers with sufficient resources may wrongly but systematically cut claims payments.⁵²⁹ In contrast, consumers seldom have sufficient resources to challenge insurers’ adverse determinations.⁵³⁰ Hence, it has been contended that insurance disputes generally do

⁵²⁴ Gabel (n 48) 1089.

⁵²⁵ Schwarcz (n 225) 741-742.

⁵²⁶ Ibid.

⁵²⁷ AO Sykes, ‘Bad Faith Breach of Contract by First-Party Insurers’ (1996) 25 *Journal of Legal Studies* 405, 407.

⁵²⁸ KS Abraham, ‘A Theory of Insurance Policy Interpretation’ (1996) 95 *Michigan Law Review* 531, 547-550.

⁵²⁹ See JH Langbein, ‘Trust Law as Regulatory Law: The Unum/Provident Scandal and Judicial Review of Benefit Denials Under ERISA’ (2007) 101 *Northwest University Law Review* 1315, 1317-1321, 1339.

⁵³⁰ Tatesh notes that workers’ compensation laws were enacted in many States in the US at the beginning of the 20th century, because the litigation system was inaccessible to most workers, due to the huge costs and delays involved, as well as the fact that many only recovered small amounts in damages for work-related injuries. See S Tatesh, ‘Insurance Law as Public Interest Law’ (2012) 2 *UC Irvine Law Review* 985, 993-998. See also LM Friedman and J Ladinsky, ‘Social Change and the Law of Industrial Accidents’ (1967) *Columbia Law Review* 50, 67-71.

not merit the expense, delays, or effort required for litigation, unless the objective is to obtain punitive damages, or the claimant is filing on behalf of a large group.⁵³¹

Given the absence of data on insurance coverage litigation in the KSA,⁵³² it may be assumed that the litigation-based model has the same benefits and shortcomings in Saudi society. The consumers are likely to face the expenses, delays, and effort required to litigate in *Shariah* courts. Nonetheless, under the IDC regime, only three Primary Committees assume jurisdiction over the entire Kingdom. Hence, parties who do not live in the three cities in which the Committees hold sessions have to travel to these cities. This engenders important costs that make the IDC less accessible.

3.4.2 Shariah-Compliance

The imbalance of power between insurers and consumers highlights the difficulty of consumers to compel insurers to pay and reinforces the contention that conventional insurance contracts are contrary to *Shariah* law.⁵³³ It is shown above that the Board of Grievances consistently refused to recognise or enforce contracts that allowed the insurer to use *riba* (interest) and *gharar* (speculation). It is also noted that even in Appeal No. 3/T/141 Year 1407H, the Board of Grievances refused to enforce an insurance contract because it was not *Shariah*-compliant, despite the intervention of the Governor.

On the other hand, the IDC Committees consistently recognise conventional insurance contracts and do not adhere to the contention that insurance that is not cooperative insurance or *takaful* is prohibited by the *Shariah*. Also, the Committees are required to apply precedent, despite the fact that the doctrine of binding precedent does not have binding force in the Islamic judicial system, and judges in Islamic courts are required to decide cases based on their own merits. Thus, it is uncertain whether the doctrine has persuasive value only since *Shariah* law does not expressly prohibit judges in Islamic courts from taking guidance from previous dicta. Nonetheless, it is also noted above that the researcher analysed 102 decisions of the IDC Committees and was unable to identify a single decision that cited and relied on precedent.

⁵³¹ Overby (n 46) 1277.

⁵³² The Annual Report published by the General Secretariat of the Committees for the Resolution of Insurance Disputes and Violation provides statistics only of disputes settled via mediation and by the Primary Committees or Insurance Dispute Committees. Two studies that sought to determine the duration and costs of litigation in the KSA are discussed in Chapter 4. However, the studies focused on litigation involving medical professionals.

⁵³³ As noted in Chapter 2, insurance is only accepted under *Shariah* law, where all the parties involved share the risks and responsibilities through a common fund, based on the understanding that each party experiencing loss will be compensated. Thus, an adverse determination would be contrary to *Shariah*.

3.4.3 Impartiality and Flexibility

Given that the hearing in court is open and accessible to the general public, insurers are likely to be influenced by the adverse publicity generated by litigation.⁵³⁴ On the other hand, it is shown above that the IDC is a creation of an empowering legislation, which is specific to the insurance industry. It enjoys a significant degree of independence and retains overall responsibility for adjudicating matters in the industry. What sets panel members apart from ordinary judges is their expertise in insurance dispute resolution. Also, it is shown in Chapter 5 that, in practice, IDC adjudicators prefer interpretations of ambiguous provisions that protect the weaker or non-drafting parties. Thus, the shortcomings from a theoretical perspective may not necessarily translate into impediments in practice.

Nonetheless, it is noted that there is concern that those serving on administrative tribunals may not possess sufficient training or experience to properly render legal decisions. Hence, members of the IDC Committees might not have undergone the same training or possess the same judicial spirit as judges of ordinary law courts and, in the case of expert panel members, may not have a legal background at all. There is also the question whether those serving on the Committees possess the necessary independence to perform essentially judicial functions.

However, it is noted in Chapter 6 that all the Committee members contacted by the researcher have previously served as judges rather than administrators within SAMA. Notwithstanding, although on paper, the IDC is an interest-based option that enjoys a high level of independence and is governed by rules that afford parties sufficient time to prepare and present their cases, its members may be more susceptible to political interference and might not maintain the same respect for an independent outlook as ordinary judges. There is no guidance provided on the vetting and appointment process that is undertaken by SAMA. The appointment of Committee members by SAMA may easily be viewed as the exercise of political influence

3.4.4 Predictability

⁵³⁴ This is related to the ‘mass litigation’ problem faced by manufacturers of drugs and medical devices. Hence, once their products are associated with consumer injuries, the healthy profits they make becomes a hedge against the loss of revenue due to the adverse publicity generated by litigation as well as the costs of litigation. See Mullady RG, ‘Considerations in the Management and Defence of Pharmaceutical Litigation in the United States’ in Howells GG (ed), *Product Liability, Insurance and the Pharmaceutical Industry: An Anglo-American Comparison* (Manchester University Press 1991) 122.

It has been demonstrated that insurers are wary of litigation due to unpredictable verdicts and huge legal fees and expenses.⁵³⁵ Moreover, a study conducted by Friedman and Ladinsky showed that the US workers' compensation scheme is only effective due to, inter alia, the shortcomings of litigation unless it imposes a strict or absolute liability on employers to ensure that they subscribe to employee cover.⁵³⁶ Thus, litigation can be very effective, if it is accompanied by strict duties.

With regard to the IDC, until the procedures utilised by the Committees and the ambiguities within the empowering legislation are clarified, the present status of the Committees and their freedom to interpret the principles of justice continue to pose a direct threat to the fair and efficient resolution of insurance disputes. Although it would seem as if the IDC regime embraces the doctrine of precedent to achieve efficient justice and protect parties' rights, the provision on the use of precedent is quite vague and none of 102 Committee decisions analysed by the researcher cited and relied on precedent. Also, there is no hierarchy or priority stated for the sources to be availed of by the Committees. The Working Rules do not delineate which decisions constitute binding or mandatory authority and which constitute persuasive authority. From a theoretical perspective, this is quite problematic because ambiguity creates a substantial risk of bias towards the policy preferences of adjudicators and possibly, miscarriage of justice.⁵³⁷

The Working Rules are also silent on the issue of enforcement. It is noted in Chapter 2 that the influence of the Continental European civil law tradition is strong in the KSA. The hallmark of the civil law system is the comprehensive codification of its law into frequently updated legal codes. These codes provide specifically for all aspects of a matter being tried and it is ventured here that codification would rectify the shortcomings indicated above. In this vein, Al-Obeikan clarifies:

The human mind is limited, which may cause conflict between opinions. It is for this reason codification is necessary. It would contribute to establishing justice. It will facilitate a judge's work and relieve him of conducting difficult research in the books of jurisprudence. We are living in times that require rapid verdicts in accumulating cases. This process will be speeded up by codification. Codification would also be useful to end the serious matter of conflicting judgments that

⁵³⁵ See OT Beatty, 'Workers' Compensation and Hoffman Plastic: Pandora's Undocumented Box' (2011) 55 *St Louis University Law Journal* 1211, 1221-1222 (discussing the problems encountered by workers, employers and insurance companies in the civil justice system).

⁵³⁶ Friedman and Ladinsky (n 240) 70-71.

⁵³⁷ W Fansworth et al, 'Ambiguity about Ambiguity: An Empirical Inquiry into Legal Interpretation' (2010) 2(1) *Journal of Legal Analysis* 257, 271.

sometimes occur within the same case and in the same city, perhaps even in the same court or that are passed by the same judge.⁵³⁸

The KSA's insurance sector is currently facing an issue that was previously acknowledged by the Commissioner of Australia in 2005:

[A] large number of Tribunals have been created, with a wide variety of powers. Many of these Tribunals were set up in response to specific needs, and lack any coherent framework or settled pattern. Reaction to a new statutory scheme, or the emergence of a particular kind of dispute, has often been the establishment of a new Tribunal.⁵³⁹

Codification, or at the very least, express acknowledgement in the Working Rules and related regulations, will mean that the IDC Committees and parties will be clear on the scope of authority, jurisdiction, power, and enforcement. Such clarity will certainly enhance the effectiveness of the system. The above shortcomings show that the proceedings of the IDC are not sufficiently streamlined to support the contention that the KSA's administrative tribunal model is a superior alternative to litigation, given that the tribunal functions like a court and does not provide a shorter and more cost-effective path towards making a comprehensive set of remedies available to policyholders. However, as noted above, a practical inquiry may provide different findings to the theoretical and doctrinal analysis conducted above. Hence, it may be difficult to argue that the IDC is not a more efficient and effective dispute resolution option when compared to litigation without examining actual decisions of the IDC.

3.5 Conclusion

The premise of this Chapter is that the consumer should be able to credibly threaten a form of legal recourse against insurers who wrongly cut payment claims. It has been argued that litigation has historically been a form of legal recourse which readily provides a comprehensive set of potential remedies for consumers. These remedies include, inter alia, punitive damages, attorneys' fees and expenses, and emotional stress damages. This Chapter has shown that there are shortcomings in the litigation model. In particular, the limitations in the available remedies, access to the courts, and the litigation process. The legal process is inefficient and works in favour of the insurers; it is slow, costly, and unpredictable. In this light, this Chapter considered

⁵³⁸ AM Al-Obeikan, *The Codification of Islamic Shari'ah* (Asharq al-'Awsat 2006) 36.

⁵³⁹ M Barker, 'The Emergence of the Generalist Administrative Tribunal in Australia and New Zealand' (8th Annual AIJA Tribunal's Conference, 9 June 2005) <http://www.sat.justice.wa.gov.au/_files/JBspeechGeneralistAdministrativeTribunal.pdf> accessed 14 November 2019.

the argument that the expenses and unpredictability of litigation could be avoided or reduced by channelling disputes into an administrative system.

What has commonly been shown is that in most societies, including the KSA, there is a need for a form of flexible adjudication, which is suited to changing social requirements and industry needs, as opposed to the rigid formal procedures that are ingrained in the operations of ordinary courts of law. The administrative tribunal model seeks to achieve this objective, because it consists of an agency that is not part of the judiciary but is tasked with determining disputes and passing binding decisions. It is essentially designed to overcome the shortcomings of the litigation system. As a result of the tribunal's reduced scope and specialised nature, it is able to offer increased speed and efficiency at a more affordable cost for the parties involved, in comparison with the realities of traditional litigation.

It is also shown that the administrative tribunal in the KSA tasked with settling insurance disputes, the IDC, is an interest-based option that enjoys a high level of independence and is governed by rules that afford parties sufficient time to prepare and present their cases. Nevertheless, the IDC Committees have tribunals in only three cities, implying that parties who do not live in these cities have to be able to meet the additional costs of travel and accommodation. Also, there is no conclusive evidence that IDC Committees constitute a better dispute resolution option than litigation; at least, from a theoretical perspective. The provision on the exercise of precedent is somewhat ill-defined, and the researcher was unable to identify any Committee decision that cited and relied on precedent; the Working Rules do not mention what constitutes binding, mandatory or persuasive authority; neither do they clarify the basic elements that all Committee decisions should contain, how decisions should be enforced, and the grounds for objection and appeal. These shortcomings may be overcome by enacting new codes or rules to clarify the enabling legislation. In the meantime, the next Chapter seeks to determine whether opting for other forms of ADR (negotiation, mediation and arbitration) may be preferable to the administrative tribunal model, given the flexibility provided by these forms of ADR over the choice of forum, and substantive and procedural law.

Chapter 4: Comparing the Administrative Tribunal Model and Other Forms of ADR

4.1 Introduction

As noted in Chapter 2, since 1928, courts in the KSA generally defer to the interpretations or *fatwa* of the Hanbali Sunni School following a resolution issued by the Saudi Judicial Board. Also, in Chapter 3, it was noted that courts in the KSA apply the *Shariah* in most civil and criminal cases. Thus, although administrative rules, regulations and implementing regulations issued by government ministers and the Saudi Council of Ministers govern some commercial activities, they simply supplement the *Shariah* as interpreted by the *Hanbali* School. Also, it was noted that although litigation has historically been a form of legal recourse that readily provides a comprehensive set of potential remedies to policyholders, courts in the KSA do not hear insurance-related disputes. The adjudication of these disputes has been delegated to an administrative tribunal or specialised committee called the Committee for the Settlement of Commercial Disputes and the Insurance Dispute Committee (IDC). It was then shown that this sector-specific administrative committee or tribunal does not provide an interest-based dispute resolution option that is without serious flaws.

This Chapter is the third step towards answering the research question of the rationale for compelling IDC adjudication. It answers this question by examining other forms of alternative dispute resolution (ADR) available in the KSA and determining whether they are more effective than the IDC adjudication. Emphasis is placed on negotiation, mediation, and arbitration.

This Chapter begins with a brief discussion of the shortcomings of the administrative tribunal model (IDC adjudication) identified in Chapter 3. It then seeks to determine whether each of the three forms of ADR may help overcome these shortcomings. It is shown that although negotiation and mediation may not be slow, laden with rules, and costly, they are less appealing to policyholders than administrative tribunals because, unlike third parties who facilitate negotiations or mediate, the IDC adjudicators can enforce their decisions or have them enforced. It is also shown that arbitration is effective but does not confer any unique advantage regarding fairness, privacy, and timely determinations. The parties to the arbitration are essentially provided the same protection as disputants in the IDC.

4.2 The Shortcomings of the Administrative Tribunal Model

It is shown in Chapter 3 that litigation is inefficient and works in favour of the insurers. It is slow, laden with rules, costly and unpredictable. It also shown that the IDC is not a better option than litigation for resolving insurance-related disputes. The provision on the use of precedent by the IDC is quite vague and the Working Rules are silent on what constitutes binding or mandatory authority and persuasive authority. Also, there is no delineation of the grounds for objection and appeal.

An important factor that is common to both courts and sector-specific administrative committees or tribunals is that they apply Saudi law under all circumstances. Hence, where the parties are unable to amicably resolve a dispute, Saudi law (*Shariah*) is applied by the court or administrative tribunal to settle the dispute. The only conflict of laws recognised by tribunal is the conflict among the four Sunni schools of Islamic jurisprudence.¹ Where a dispute implicates the substantive laws of more than one country, the tribunals applies Saudi law as the most appropriate law to resolve the dispute. For example, Article 11 of the Service Agency Regulation² stated that all disputes involving foreign contractors and Saudi service agents should be submitted to the Committee for the Settlement of Commercial Disputes, which applied only Saudi law. Saudi courts have even assumed jurisdiction where contracts provided that disputes arising from the contracts should be submitted to non-Saudi courts.³ As such, a foreign party with little or no grasp of the *Shariah* as it is applied in the KSA is more likely to avoid the courts and administrative tribunals in the KSA.

Nonetheless, in 1979, the Companies Department of the Ministry of Commerce issued Circular No. 3/13/1399 H of October 10, 1979 providing that disputes that involve the Government may be submitted to arbitration rather than the Board of Grievances if the parties obtain prior approval of the Council of Ministers. Hence, the Ministry of Commerce required parties to register their agreement and inform the Council of Ministers in order to access arbitration within or outside of the KSA. However, it was uncertain whether the Ministry of Commerce expected the arbitral tribunal outside of the KSA to apply Saudi law as the *lex causae* or the

¹ A Husen and J Burns, 'Choice of Forum in Contracts with Saudi Arabian Counterparties: An Analysis of the DIFC Common Law Courts from a Saudi Arabian Perspective' (2015) 48(3) *The International Lawyer* 179, 181; JL Brand, 'Aspects of Saudi Arabian Law and Practice' (1986) 9(1) *Boston College International and Comparative Law Review* 1, 29; A Khan, 'The Interaction between *Shariah* and International Law in Arbitration' (2006) 6 *Chicago Journal of International Law* 791, 797-798.

² Enacted by Royal Decree M/2 of December 31, 1977.

³ AY Baamir, *Saudi Law and Judicial Practice in Commercial and Banking Arbitration* (Unpublished PhD Dissertation, Brunel University 2008) 191.

law that was chosen by the forum tribunal from the relevant legal systems. This is important because the outcome of legal actions is more likely to differ where the Hanbali version of the *Shariah* is applied, given the uniqueness of this system. For example, an insurance policy is only accepted under the *Shariah* where all the parties share the risks and responsibilities through a common fund and based on the understanding that each party who experiences loss will be compensated. This may be problematic where the insurance policy is recognised by the laws of other jurisdictions in which the foreign party is established. The question that then follows is whether courts in the KSA will recognise an award granted by non-Saudi arbitral tribunal or mediator that applied legal principles or doctrines that are contrary to the Hanbali version of the *Shariah*. As such, the enforceability of the award or decision of the arbitrator or mediator is important in determining whether the expenses and unpredictability of litigation and administrative tribunals could be avoided or reduced by channelling disputes to the ADR systems. Notwithstanding, the next section discusses the framework for ADR procedures in the KSA and determines whether they provide better options than the IDC's administrative model.

4.3 The Effectiveness for Other ADR Options

The alternatives to litigation and administrative tribunals in the KSA are limited. They include direct negotiation between the parties, mediation (insurance coverage disputes, labour disputes, family disputes, and disputes between distributors and principals), and arbitration.⁴ This section examines the effectiveness of these conciliatory means for the settlement of insurance disputes in the KSA.

4.3.1 Negotiation

Traditionally, the preferred method for settling disputes has been the *Sulh*, which means resolution or fixing, and emphasises the importance of religion.⁵ Thus, disputants in the Middle East have traditionally preferred building personal relations by socialising and settling disputes through continued negotiation.⁶ This reflects the larger cultural perception of conflict as a disruptive agent in society which members must collectively avoid.⁷ It follows that dispute

⁴ For a comprehensive analysis of this framework, see M Al-Ghamdi and PJ Neufeld, 'Saudi Arabia' (2018) 10 *The Dispute Resolution Review* < <https://thelawreviews.co.uk/edition/the-dispute-resolution-review-edition-10/1166494/saudi-arabia>> accessed 14 November 2019.

⁵ W Iqbal, 'Courts, Lawyering, and ADR: Glimpses into the Islamic Tradition' (2008) 28 *Fordham Urban Law Journal* 1035, 1037-1038. See also GE Irani, 'Apologies and Reconciliation: Middle Eastern Rituals' in E Barkan and A Karn (eds), *Taking Wrongs Seriously: Apologies and Reconciliation* (Stanford University Press 2006).

⁶ RMG Tirados, 'Negotiation' (2010) 48 *Management* 849, 1023-1027.

⁷ M Abu-Nimber, 'Conflict Resolution Approaches: Western and Middle Eastern Lessons and Possibilities' (1996) 55 *American Journal of Economics and Sociology* 35, 36.

resolution systems that require the parties to act as adversaries are shunned in this society.⁸ Negotiation is an interest-based approach that provides advantages to parties seeking to resolve insurance disputes by concerting their interests rather than acting as adversaries. However, despite the traditional role of negotiation in Saudi society, it is surprising that at the beginning of this century, the *Sulh* was only invoked in rural areas that had few courts and government officials.⁹ Hence, this dispute resolution option also has serious shortcomings. The advantages and shortcomings are discussed here under five criteria for judging the quality of a dispute resolution option.

4.3.1.1 Cost and Duration

This form of ADR was preferred to litigation in the KSA because it avoided a cycle of revenge and affirmed the bonds between groups.¹⁰ It is also a cost-effective and swifter process for settling disputes than litigation in courts and administrative tribunals. The parties agree on a form of joint action which they both undertake to manage and resolve the dispute. This demonstrates that negotiation is the best option when it becomes clear to the parties that unilateral action through the courts or tribunals would impose a heavy toll on both sides. With negotiation, the working relationship is preserved, and the medium-based commercial benefits of each party is taken into account when solutions are considered.¹¹

The parties are not required to involve an outside party thereby saving the cost of hiring the services of the third-party neutral. This also implies that delays caused by the dispute are reduced, thereby making this resolution option less expensive. It must however be noted that a party may use negotiation as a stalling tactic in order to prevent the other party from enforcing their contractual rights through rights-based options such as arbitration or litigation. This may turn out to be more expensive for the party that eventually asserts its rights through arbitration or litigation.

⁸ Ibid.

⁹ See M Gopin, *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East* (Oxford University Press 2002). The Holy Prophet noted that *Sulh* is allowed except in cases where it enables a party to make ill-gotten gains. (4: 128). In the KSA, some agreements between defendants and plaintiffs have been enforced as *Sulh* contracts such as where the defendant admits the plaintiff's claim and agrees to pay a specified amount of money to settle a debt or end the conflict. See EA Alsheikh, 'Distinction between the Concepts Mediation, Conciliation, Sulh and Arbitration in Shari'ah Law' (2011) 25 *Arab Law Quarterly* 367, 372-373.

¹⁰ Iqbal (n 5) 1037-1038.

¹¹ SB Goldberg et al, *Dispute Resolution: Negotiation, Mediation and Other Processes* (Aspen Publishers 1999) 22.

4.3.1.2 *Shariah* Compliance

As noted above, disputants in the Middle East have traditionally preferred building personal relations by socialising and settling disputes through continued negotiation. As will be shown below, the Prophet and early Muslims promoted dispute resolution outside of the public court system. Hence, the outcome of negotiation is likely to be *Shariah*-compliant where the parties are Muslims and associated with one another in a common endeavour. They work together towards settling differences in a manner that complies with the *Shariah*. Although they may or may not agree to select a revered or respected individual in society to help them negotiate, where they select such an individual, he or she is likely to be a devout Muslim. The individual focuses on enhancing the relationship between the parties and declares a *hudna* or truce and seeks an outcome that maintains the integrity, status and honour of both parties.¹² The neutral party is able to achieve this outcome because he is highly respected, and people often hearken to his or her words.

Thus, the objective of negotiation is to achieve an outcome that may not otherwise be achieved by unilateral action.¹³ The outcome is likely to be more *Shariah*-compliant than the decisions of arbitrators who may be based outside of the KSA. It must nonetheless be noted that the parties are not required to choose a devout Muslim as negotiator. Also, the parties are free to enforce contracts that are not *Shariah*-compliant. Hence, negotiation does not compel the parties to comply with the *Shariah*.

4.3.1.3 Impartiality

No party may be expected to use negotiation to obtain an unfair advantage. This is because this dispute resolution option is voluntary. The parties cannot be compelled to participate in a negotiation by the contract or legislation. A party's participation may therefore be contingent on the existence of adequate safeguards against inequities in the process. Also, the parties may accept or reject the outcome or simply withdraw from the process at any time if they believe their interests are being undermined. As noted above, the outcome may be reached with the help of a third-party neutral. However, there is no guidance on the eligibility, competence and impartiality of the third-party neutral who is chosen to act as negotiator. Pretorius argues that

¹² See N Yassine-Hamdan and FS Pearson, *Arab Approaches to Conflict Resolution: Mediation, Negotiation and Settlement of Political Disputes* (Routledge 2014) 45, 270. See also D MacEoin, 'Tactical Hudna and Islamist Intolerance' (2008) *Middle East Quarterly* 39, 39-40.

¹³ MZM Nor, 'Settling Islamic Finance Disputes: The Case of Malaysia and Saudi Arabia' in A Koppel, Matter M and Palmer V (eds), *Mixed Legal Systems, East and West* (Ashgate 2015) 267, 270.

this form of ADR has not been very successful because parties are often too partial and emotionally invested to make rational and objective decisions.¹⁴ Also, the effectiveness of negotiation largely depends on the cultural background of the parties.¹⁵ It is more likely to be effective where the parties are locals or resident in the KSA. They may easily deal with each other directly or through respectable advisors in the local community. Where foreign parties are involved, the process of negotiation may be less effective, especially where the dispute involves more than just a misunderstanding.

4.3.1.4 Flexibility

It may be argued that this is the most flexible dispute resolution option. This is because there are no prescribed rules and the parties are free to adopt any rules to guide the process. Also, since only the parties and their representatives may be involved, the negotiation may be shaped in accordance with the parties' interests. The parties are also free to determine the subject matter, location of the negotiation, and set a timetable for reaching an outcome that is acceptable to both parties. Thus, where the parties negotiate in good faith, they may design the process and determine an outcome that reflects their interests and needs. For example, where the dispute is highly sensitive in nature, the parties may exclude all persons with no interests in the matter thereby preserving the confidentiality of the process.

It must however be noted that there is no guarantee of the good faith of any of the parties. Thus, since there are no guidelines on procedures, the weaker party may be at a disadvantage. This may make the outcome subject to future challenge through a rights-based option where the weaker party may seek to assert his or her rights.

4.3.1.5 Predictability

Given that negotiation is an interest-based option, the likelihood of a successful outcome for both parties is high. This is because the parties are free to shape the process in accordance with the interests and needs. However, there is no timeframe within which negotiation must be concluded. Also, a party cannot be compelled to continue negotiating or to accept the outcome. Hence, there is much uncertainty created by the fact that any party may terminate the negotiation at any time, regardless of the time and money invested by the other party. It is

¹⁴ P Pretorius, 'ADR: A Challenge to the Bar for the 1990s' (1990) 1 *Consultus* 38, 38.

¹⁵ See CH Tinsey et al, 'The Interplay between Culturally-and Structurally-based Mental Methods of Intercultural Dispute Resolution: West Meets Middle East' (2011) 16(3) *International Negotiation* 481, 481-510.

therefore not surprising that despite the advantages of negotiation and its traditional role in Saudi society, at the beginning of this century, the *Sulh* was only invoked in rural areas that had few courts and government officials.¹⁶ The absence of any official guidelines makes it difficult a foreign party to pre-empt the dispute resolution process. There is no requirement or even expectation of predictability and consistency in the way in which negotiation should be conducted. Hence, it is less appealing to a policyholder seeking to compel an insurance company with stronger bargaining power to pay.

4.3.2 Mediation

Parties in the KSA may also consider mediation. The General Secretariat of the Committees for the Resolution of Insurance Disputes and Violation ('General Secretariat') states that parties to insurance disputes must seek mediation before submitting the disputes to the relevant Primary Committee; and this resulted in an increase in the number of cases resolved amicably by 56.08 per cent between 2014 and 2015.¹⁷ However, the statistics published by the General Secretariat reveal that the majority of insurance-related disputes in the KSA are not settled via mediation.¹⁸ Thus, mediation is not effective in practice. Nonetheless, it is assessed from a theoretical perspective in this section.

4.3.2.1 Cost and Duration

Chong and Zin noted that ADR methods such as negotiation and mediation have become more popular around the world due to the search for quicker and more cost-effective alternatives to litigation.¹⁹ They argue that the advantages of these forms of ADR include their use as mechanisms for preventing fully fledged disputes, the flexibility of the process, and the achievement of outcomes deemed fair by both parties.²⁰ Hence, since mediation is required at an early stage in the KSA (before the dispute is referred to the Primary Committee), it may be argued that mediation allows the parties to avoid the 'sunk cost' of litigation²¹ or IDC

¹⁶ See M Gopin, *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East* (Oxford University Press 2002).

¹⁷ See General Secretariat, *The 11th Annual Report for 2015* (General Secretariat 2015) 22. This report is analysed in Chapter 5.

¹⁸ This is discussed in Chapter 5.

¹⁹ H Chong and RM Zin, 'Selection of Dispute Resolution Methods: Factor Analysis Approach' (2012) 19(4) *Engineering, Construction and Architectural Management* 428, 430-433.

²⁰ *Ibid.*

²¹ See RJA Rhee, 'A Price Theory of Legal Bargaining: An Inquiry into the Selection of Settlement and Litigation under Uncertainty' (2006) 56 *Emory Law Journal* 619, 622. However, see RA Brealey et al, *Principles of Corporate Finance* (8th edn, S&P Global 2006) 116 (arguing that 'sunk costs are like spilled milk: They are past

adjudication. Hence, by achieving an acceptable outcome via mediation, the parties would not feel obligated to pursue the litigation or IDC adjudication to the end because of the time, effort and money invested in the dispute resolution process.

4.3.2.2 Shariah Compliance

The culture of mediation was adopted and promoted by the Holy Prophet, and subsequently, the successors of the Holy Prophet, Khalifahs, were considered mediators.²² The influence of this method in Muslim-majority countries may explain why it was adopted by Article 1850 of the Civil Code of the Ottoman Empire (*Majalla*). The method therefore promotes solidarity between Muslims who must come together as members of the community and settle their disputes in a manner that ensures peace. It follows that the outcome of mediation is more likely to *Shariah*-compliant than that of any of dispute resolution option. Also, all insurance-related disputes in the KSA must be submitted to the IDC; mediation through the General Secretariat is the first step of the process; and the mediation must comply with the *Shariah*.

4.3.2.3 Impartiality

As in non-Islamic jurisdictions, the success of the method is also linked to the impartiality of the mediator and confidentiality of the process.²³ The mediator is able to persuade the disputants to make concessions because the mediator is impartial, independent and objective. On the basis of experience and fairness, the mediator devises a compromise that is acceptable to both parties. Given that mediation is by definition private, it is easier for the parties to ensure the confidentiality of the process and even the dispute, unlike litigation, public tribunal adjudication or even arbitration.²⁴

However, the question about mediator neutrality is also problematic. Cobb and Rifkin noted that neutrality in mediation may be described in three ways.²⁵ First, neutrality must be impartial, which means mediators must either ‘dismiss their opinions, values, feelings, and

and irreversible outflows. Because sunk costs are bygones, they cannot be affected by the decision to accept or reject the project, and so they should be ignored’).

²² SA Saleh, ‘The Settlement of Disputes in the Arab World: Arbitration and Other Methods’ (1986) 4 *International Tax and Business Lawyer* 280, 281.

²³ KK Kovach, *Mediation: Principles and Practice* (3rd edn, Thomson West 2004) 13.

²⁴ D Ciraco, ‘Forget the Mechanics and Bring in the Gardeners’ (2000) 9 *University of Baltimore Intellectual Property Law Journal* 47, 76.

²⁵ S Cobb and J Rifkin, ‘Practice and Paradox: Deconstructing Neutrality in Mediation’ (1991) 16 *Law and Society Inquiry* 35, 41-62.

agendas' or 'separate them from the mediation process' in order to avoid imposing his or her values, which may align with those of one party and not the other.²⁶ Second, neutrality must be equidistant, which means that mediators must keep the relationship between the parties equal, even where the mediators' decisions favour one side over the other.²⁷ Third, neutrality must involve 'practice in discourse' which means that mediators must shape problems in such manner as to provide all speakers the opportunity to be heard, thereby minimising the chances of delegitimising or marginalising one party.²⁸

Following Cobb and Rifkin's recommendations, it may be argued that weaker parties or foreigners may be less keen on selecting mediation given the difficulty of finding a mediator that is impartial, equidistant and regulates discourse in a manner considered fair by both parties. Given the absence of official guidelines on qualifications, it is more likely that the mediator would be guided by opinions, values, feelings and agendas in the mediation process and would impose his or her values upon the parties. What is pertinent here is that there is no clearly defined mechanism by which mediators in the KSA may maintain neutrality. On the other hand, litigation and the administrative tribunal model do not require such a mechanism since the judiciary and administration are generally established on the promise of neutrality. The principles of adjudication are impersonal and developed to ensure the neutrality of the judicial or quasi-judicial process; and judges are trained to separate their opinions, values and feelings from the process and decide cases in accordance with the law. As Wechsler famously argued, the 'virtue or demerit of a judgment turns, therefore, entirely on the reasons that support it and their adequacy to maintain any choice of values it decrees.'²⁹

However, this does not imply that legislators who draft and enact laws and judges who interpret them are not sometimes partisans of specific sets of ethical or social opinions.³⁰ In all jurisdictions, including the KSA, some decisions of courts and tribunals are violative of neutrality, and adjudicators sometimes dispense with justice according to considerations of

²⁶ Ibid, 41-42.

²⁷ Ibid, 44-46.

²⁸ Ibid, 62.

²⁹ H Wechsler, 'Toward Neutral Principles of Constitutional Law' (1959) 73 *Harvard Law Review* 1, 6, 15-16. He noted further that 'A principled decision, in the sense I have in mind, is one that rests on reasons with respect to all the issues in the case, reasons that in their generality and their neutrality transcend any immediate result that is involved.' Ibid, 19.

³⁰ See Hart's analysis of decisions of Supreme Court judges and argument that reason is not unfortunately always the life of law. HLA Hart, 'Foreword: The Time Chart of the Justices' (1959) 73 *Harvard Law Review* 84, 101, 125.

personal expediency.³¹ Even where they rely strictly on the law, the fact that the law is based on a societal vision or consensus of acceptable values may be problematic where one party does not share the same vision or values as the rest of the society. With both litigation and the administrative tribunal model, the values of society will be imposed on the party. With negotiation and mediation, the party will be unable to compel the other party to look beyond the societal vision or values

4.3.2.4 Flexibility

Mediation is a flexible process that allows for the intervention of a neutral third party in order to resolve disputes that arise from a contract.³² The objectives are similar to those of negotiation, viz., achieve an outcome that is beneficial to both parties and preserve the ongoing project.³³ Thus, mediation has been defined as ‘an assisted and facilitated negotiation carried out by a third party.’³⁴ Although parties in the IDC cannot select a mediator, the General Secretariat’s choice enjoys flexibility in crafting remedies that judges cannot afford. Together with the parties, he may customise the process, expand the range of interests that should be considered, reach creative solutions that may not be available in court, and protect the confidentiality of the parties and dispute.

It must however be noted that there are no guidelines on the procedures. Thus, the party who is unsatisfied with the outcome is less likely to be satisfied with the procedure adopted by the mediator, as well as the latter’s choice of remedies. This may make the outcome subject to future challenge through a rights-based option such as arbitration or litigation.

4.3.2.5 Predictability

Cheung, Suen and Lam have demonstrated that the selection and performance of ADR methods are influenced by the preservation of the relationship and enforceability of the final decision.³⁵

³¹ See Pollak’s criticism of Wechsler’s conception of judicial neutrality in LH Pollak, ‘Racial Discrimination and Judicial Integrity: A Reply to Professor Wechsler’ (1959) 108 *University of Pennsylvania Law Review* 1, 5, 34.

³² SO Cheung and YW Yeung, ‘The Effectiveness of the Dispute Resolution Advisor System: A Critical Appraisal’ (1998) 16(6) *International Journal of Project Management* 367, 367-370.

³³ BF Tennille et al, ‘Getting to Yes in Specialised Courts: The Unique Role of ADR in Business Court Cases’ (2010) 11 *Pepperdine Dispute Resolution Law Journal* 35, 49.

³⁴ SB Goldberg et al, *Dispute Resolution: Negotiation, Mediation and Other Processes* (Little Brown & Co 1992) 103.

³⁵ SO Cheung et al, ‘Fundamentals of Alternative Dispute Resolution Processes in Construction’ (2002) 128(5) *Journal of Construction Engineering and Management* 409, 409-416.

As noted above, enforceability is an important factor even in countries such as the KSA where the culture of mediation has been promoted for several centuries, but where decisions that do not comply with the *Shariah* are unenforceable. This therefore is a serious impediment for mediation given that the parties must agree on the mediator and forum in order to use the ADR method. If a party is not willing to assist in reaching an amicable settlement, the mediator cannot intervene. Also, if a party refuses to sign the mediator's decision, it does not become legally binding on both parties.³⁶ It follows that it is uncertain whether a party would agree on the mediator and forum, as well as sign the mediator's decision.

In the KSA, the uncertainty is limited to whether a party will accept to sign the mediator's decision in order for it to become binding. This is because parties are required to submit disputes to mediation at the General Secretariat. Hence, the mediator and forum are chosen by the General Secretariat. Nonetheless, there is no timeframe within which the mediation must be concluded, and the mediator's decision lacks finality since it may be challenged in a Primary Committee. The fact that the parties can reject the settlement agreement recorded by the mediator is good enough reason to compel a weaker party to seek an alternative that binds the stronger party regardless of the latter's consent. As Kaufman and Duncan pointed out, the mediator is without authority to impose a settlement.³⁷

4.3.3 Arbitration

Arbitration can best be described as a 'process by which parties consensually submit a dispute to a non-governmental decision-maker, selected by or for the parties, to render a binding decision resolving a dispute in accordance with neutral, adjudicatory procedures affording each party an opportunity to present its case.'³⁸ In other words, it is a voluntary process that ends with a final resolution of the disputes between the parties outside of the court system.³⁹ The dispute submitted to the arbitral tribunal results from an agreement between the parties and a defined legal relationship, which may be contractual or otherwise.⁴⁰ The arbitration agreement creates a framework for a dispute resolution system for the parties which lies outside the

³⁶ See E Gaillard and J Savage (eds), *Fourchard, Gaillard, Goldman on International Commercial Arbitration* (Kluwer Law International 1999) 15; P Ramsden, *Law of Arbitration* (Juta 2009) 3.

³⁷ S Kaufman and GT Duncan, 'Third Party Intervention: A Theoretical Framework' in MA Rahim (ed), *Managing Conflict in Organisations* (Praeger 1989) 273, 277.

³⁸ G Born, *International Arbitration: Law and Practice* (Wolters Kluwer, 2012) 4.

³⁹ D Carper et al, *Understanding the Law* (5th edn, Thomson West 2008) 184.

⁴⁰ J Poudret and S Besson, *Comparative Law of International Arbitration* (2nd edn, Sweet & Maxwell 2007) 121.

purview of courts of law.⁴¹ The arbitral tribunal derives its power from the arbitration agreement and it only has jurisdiction where a dispute exists at the time one party made the request for arbitration.⁴²

Like negotiation and mediation, the culture of arbitration was adopted and promoted by early Muslims.⁴³ However, while it is certain that the Prophet and early Muslims promoted dispute resolution outside of the public court system, it is uncertain whether the form of ADR adopted and promoted was negotiation, mediation or arbitration. There is a strong case for arguing that it was arbitration given that the *Shariah* allows the *Dhimmiyin* or Jews and Christians who are resident in Muslim countries to create a framework for settling their disputes. Thus, they are entitled to submit disputes to arbitrators of their choice. However, where one of the parties is Muslim, the *Maliki*, *Shafi'i* and *Hanbali* Schools require a Muslim adjudicator to settle the dispute, although they also recognise non-Muslim arbitrators where both parties consent.⁴⁴ This is based on the *Surah V*, verse 42 which provides that: 'If they come to thee, either judge between them or decline to interfere. If thou decline, they cannot hurt thee in the least.'⁴⁵ However, this may be said to conflict with another verse, *Surah V*, verse 49 that provides that 'Judge thou between them by what Allah hath revealed and follow not their vain desires.' The *Hanafi* School follows the latter verse and holds that it obliges Islamic courts to always apply the *Shariah* regardless of whether non-Muslims are involved in the dispute. Nonetheless, as noted in chapter 2, Saudi courts defer to the interpretations of the *Hanbali* School, not the *Hanafi* School. Thus, it may be contended that *Surah V*, verse 49 only applies where the judge or *kadi* (arbitrator) has accepted to settle a dispute involving a *Dhimmiyin*.

What is important to note is that the Quran specifically recommends ADR methods, which may be interpreted as a recommendation of arbitration. It provides as follows:

If you fear a breach between them (the man and his wife), appoint (two) Hakams [arbitrators or mediators], one from his family and other from her family; if they

⁴¹ ML Moses, *The Principles and Practice of International Commercial Arbitration* (2nd edn, Cambridge University Press 2012) 43.

⁴² See S Jarvin, 'The Sources and Limits of the Arbitrator's Powers' in Lew JM (ed), *Contemporary Problems in International Arbitration* (Springer 1987) 54-55.

⁴³ AH El-Ahdab and J El-Ahdab, *Arbitration with the Arab Countries* (3rd edn, Kluwer Law International 2011) 30-31.

⁴⁴ Ibid.

⁴⁵ See also, Quran, 5: 42.

both wish for peace, Allah will cause their reconciliation. Indeed, Allah is ever all-knower, well acquainted with all things.⁴⁶

It may therefore be stated that the contention that Muslim residents in the Middle East are generally hostile to the idea of international arbitration⁴⁷ is misguided. Saleh argued that international arbitration is viewed as a concession to the foreign party and a way of depriving the Muslim of the right to be heard by a Muslim judge.⁴⁸ This may only be true of Muslims who defer to the interpretations of the Hanafi School. Regarding the other Schools, arbitration is regarded as a framework created by the parties, Muslim and/or non-Muslim, outside of the *Shariah* court system. The arbitral tribunal may apply the laws of a foreign, non-Muslim country, although it is expected to take the *Shariah* into account where enforcement is anticipated to take place in an Islamic country. Hence, the award should not include the payment of interest or performance of activities considered *Gharar* such as gambling and prostitution.⁴⁹

There are many advantages to arbitration that make it a desirable option in Islamic countries such as the KSA. In order to protect parties that choose this ADR option, different regulations and implementation rules have been enacted in the KSA over the past four decades. The next section discusses these regulations and rules and determines whether they make arbitration more cost-effective and expeditious than the litigation and administrative tribunal models.

4.3.3.1 The Old Regime

On April 25, 1983, the KSA enacted a separate arbitration legislation (Regulation) through Royal Decree M/46. The Regulation superseded the arbitration provisions of the Commercial Court Code that was issued in 1931. On May 25, 1985, the Implementation Rules to the Regulation were enacted by the Council of Ministers Resolution No. 7/2021/M. The Regulations describe the substantive rights while the Rules outline the procedure for initiating and conducting arbitration. The latter includes rules governing the issue of summons, opinion

⁴⁶ Quran, 4: 35.

⁴⁷ Saleh (n 22) 281-282.

⁴⁸ Ibid.

⁴⁹ M Lew et al, *Comparative International Commercial Arbitration* (Kluwer Law International 2003) 280.

evidence, and nonappearances. However, the Rules were silent on the seat of the arbitral tribunal, communication between the parties, communication between the tribunal and third parties, and the way in which arbitral awards had to be delivered.⁵⁰ These loopholes may be explained by the fact that the Regulation was deemed to be a codification of the Hanbali teachings on arbitration.⁵¹

In light of the recognition of arbitration as the creation of a separate framework for dispute resolution, Article 1 of the Regulation required arbitration to be voluntary unless a party was compelled by the regulator to adopt that route as a preliminary step towards litigation. This effectively restricted the jurisdiction of the *Shariah* courts given that parties were entitled to create a framework for the resolution of their disputes outside of the *Shariah* courts' jurisdiction.

The above notwithstanding, other provisions of the Rules made the arbitral tribunal an extension or annex to the *Shariah* court. Article 36 for example required the arbitral tribunal to apply the rules of procedure of *Shariah* courts. The arbitral tribunals in the KSA therefore used the same rules of procedure as *Shariah* courts until the enactment of the Law of Procedure in 2000. Also, Article 39 of the Implementing Rules provided that the arbitral tribunal should abide by the principles of the *Shariah*, including the *Shariah* rules of evidence. Article 1 of the Rules forbade the tribunal from receiving complaints regarding matters that fell in the category of crime called *Hudud*. These include adultery between spouses, fornication, sodomy, public apostasy, armed robbery and matters concerning public order.⁵² Article 3 of the Rules provided that the arbitrator should be a Muslim male or male public official approved by the department to which he belonged. Article 5 of the Regulation required the parties to send the arbitration agreement to the Board of Grievances or Ministry of Commerce and Industry for approval before the arbitral tribunal could receive and settle the dispute.

Although the Regulation and Rules allowed government agencies to enter into arbitration agreements with private parties (this was initially prohibited by Article 2 of the Ministerial

⁵⁰ For a detailed analysis of the Regulation and Rules, see Baamir (n 3) 149-175; NB Turck, 'Dispute Resolution in Saudi Arabia' (1988) 22(2) *The International Lawyer* 415, 431-436.

⁵¹ See S Saleh, *Commercial Arbitration in the Arab Middle East: A Study in Sharia and Statute Law* (2nd edn, Graham & Trotman 2006) 290-325.

⁵² See AK Al-Hamoudi, *Criminal Defense in Saudi Arabia: An Empirical Study of the Practice of Criminal Defense in Saudi Arabia* (Unpublished PhD Dissertation, University of Washington 2014) 63-64.

Resolution No. 58 of June 25, 1963), the restrictions placed on the process regarding the scope of arbitration, gender of the arbitrator, rules of procedure and evidence, and prior approval of the arbitration agreement, made arbitration a far less attractive option than negotiation and mediation. In fact, it was simply a slower and more expensive form of litigation, taking into account the requirement to submit arbitration agreements to the Board of Grievances or Ministry of Commerce and Industry; the costs of finding and hiring a competent arbitrator or panel, secretary, reporter, translator (where foreign parties are involved); and the rental fee for the chamber in which the proceedings took place.

Also, the Board of Grievances was the competent body regarding the enforcement of foreign arbitral awards granted in countries that had ratified the Convention of the Arab League on the Enforcement of Judgments of September 15, 1952.⁵³ Hence awards issued by tribunals in countries that had not ratified this Convention were not enforced in the KSA without a new hearing in a *Shariah* court. Equally, the *Shariah* courts were the competent bodies for enforcing arbitral awards granted in the KSA. Article 44 of the Rules provided for the issuance of an enforcement order requesting all government agencies to execute the award attached to the order. However, awards that were not consistent with the *Shariah* were not enforced. The Saudi court reviewed decisions of arbitral tribunals and issued new decisions on the merits. In *Jadawel International (Saudi Arabia) v Emaar Property PJSC (UAE)* for example, the international chamber of commerce issued a final award dismissing Jadawel's claims. The latter challenged the decision before the Board of Grievances. The Board reviewed the merits, reversed the award and ordered Emaar to make reparations to Jadawel.⁵⁴

The old regime was therefore problematic because it simply made the arbitral tribunal an extension or annex to the *Shariah* court, gave the latter extensive powers of intervention and ensured that the *Shariah* was applied in almost all circumstances. It therefore failed to create a neutral setting for dispute settlement and protect parties from local prejudice, which is said to be arbitration's most significant advantage over litigation.⁵⁵ This begs the question of why the

⁵³ See Article 8(1)(g) of the Board of Grievances Regulation promulgated by Royal Decree No. 51.

⁵⁴ See E Al Tamimi, *The Practitioner's Guide to Arbitration in the Middle East and North Africa* (Brill 2009) 371.

⁵⁵ See MH Strub, 'Note: Resisting Enforcement of Foreign Arbitral Awards under Article V(1)(E) and Article 1(W) of the New York Convention: A Proposal for Effective Guidelines' (1990) 68 *Texas Law Review* 1031, 1031.

government did not simply train and appoint more trial judges rather than reform the law governing arbitral tribunals.

4.3.3.2 The New Regime

A new Arbitration Regulation was enacted on June 8, 2012 through Royal Decree No. M/34. It became effective on July 8, 2012 and replaced the Regulation of 1983. It is largely modelled on the UNCITRAL Model Law on International Commercial Arbitration (2006 version) and seeks to align the law of the KSA with international arbitration norms.⁵⁶ In May 2017, the Council of Ministers enacted the Implementing Regulations of the Arbitration Regulation. Article 8 of the Implementing Regulations provides that where the parties fail to agree on the rules of procedure to be followed by the tribunal, it may choose to follow specific rules. Article 11 of the Arbitration Regulation require courts of the KSA to decline jurisdiction where there is a valid arbitration agreement and a party requests referral of the dispute to arbitration. The parties are allowed the freedom to choose the rules of procedure that the arbitral tribunal will apply, including the choice of law rules, venue of the arbitration, and the language in which the proceedings will be conducted. They are also free to appoint the arbitrators. The arbitral tribunal may issue an award within twelve months from the commencement date of the proceedings, and this period may be extended by six months if the parties agree. An award duly granted has *res judicate* status and may be enforced within sixty days of the issuance under Article 52 of the Arbitration Regulation.

In 2014, the Council of Ministers established the Saudi Centre for Commercial Arbitration (SCCA) to facilitate arbitration in the KSA. The SCCA's Arbitration Rules were issued in 2016. Despite the above changes, it is uncertain whether the Arbitration Regulation of 2012 may be said to have given a new lease of life to the argument that arbitration is a better option than litigation, the administrative tribunal model and other forms of ADR. The next section considers this argument regarding the resolution of insurance-related disputes in the KSA.

4.3.3.3. Insurance Dispute Resolution under the New Regime

As noted above, the Arbitration Regulation of 2012 was largely modelled on the UNCITRAL Model Law on International Commercial Arbitration (2006 version) in order to align the law

⁵⁶ See SMB Abbadi, *Arbitration in Saudi Arabia: The Reform of Law and Practice* (Unpublished SJD Dissertation, Pennsylvania State University 2018) 82-83.

of the KSA with international arbitration norms. The Regulation therefore removed a significant number of barriers that businesses and foreign parties previously faced when attempting to resolve disputes through arbitration having the KSA as the seat of the proceedings or Saudi law as the applicable law.⁵⁷ There were cases of *Shariah* courts in the KSA adjudicating disputes despite the existence of arbitration agreements or clauses in courts that designated another jurisdiction as the seat and the laws of another country as the applicable law.⁵⁸ Many foreign investors lacked sufficient knowledge of Saudi rules of procedure and evidence that arbitral tribunals in the KSA applied.⁵⁹ Without fixed codes, the KSA was an unfamiliar forum to these foreign investors.⁶⁰

When enacted, the goal of the Regulation of 1983 was to provide an effective means of dispute resolution for both international and local businesses trading within the KSA.⁶¹ However, initially the insurance sector was largely resistant to the use of arbitration to settle disputes.⁶² The willingness to honour and enforce arbitration agreements in contracts may be attributed to the reform that culminated in 2016 with the establishment of the SCCA. Also important are the international conventions ratified by the KSA prior to the enactment of the Cooperative Insurance Companies Control Law of 2003 (CICCL), including the Riyadh Convention for Judicial Cooperation of 1983 and the New York Convention for the Enforcement and Recognition of Foreign Arbitral Awards of 1958 ('New York Convention').⁶³ However, there were no specific forums for resolving insurance disputes that arose from the permissible *takaful*

⁵⁷ See A Baamir and I Bantekas, 'Saudi Law as Lex Arbitri: Evaluation of Saudi Arbitration Law and Judicial Practice' (2009) 25(2) *Arbitration International* 239, 243.

⁵⁸ See Saleh (n 22) 433.

⁵⁹ Y Al-Samaan, 'The Settlement of Foreign Investment Disputes by Means of Domestic Arbitration in Saudi Arabia' (1994) 9(3) *Arab Law Quarterly* 217, 217-218.

⁶⁰ Alnowaiser however argues that many international observers unfairly conceived of Islamic law as repressive and retrogressive when in reality most laws in the KSA are very similar to laws that apply in all developed countries. See K Alnowaiser, 'The New Arbitration Law and Its Impact on Investment in Saudi Arabia' (2012) 29 *Journal of International Arbitration* 723, 723-724.

⁶¹ See S Al-Ammari and AT Martin, 'Arbitration in the Kingdom of Saudi Arabia' (2014) 30(2) *Arbitration International* 387, 388.

⁶² This resistance within the insurance sector mirrors the resistance of the KSA as whole to arbitration. The KSA's regulatory attitude has gone through numerous phases over the last century, wavering from welcoming the use of this form of resolution to significantly resisting it in light of the decision in *Saudi Arabia v Arabian American Oil Co (ARAMCO)*, ad hoc award, 27 ILR 117, 145 (1963), then to gradually embracing arbitration again as a notion of globalised commercial culture. See AY Baamir, *Shari'a Law in Commercial and Banking Arbitration: Law and Practice in Saudi Arabia* (Routledge 2010) 95-96. See also RM Seyadi, *The Effect of the 1958 New York Convention on the Foreign Arbitral Awards in the Arab Gulf States* (Cambridge Scholars Publishing 2017) 171-173.

⁶³ The KSA acceded to the Convention in 1994 thereby accepting to recognise the arbitration agreements and awards issued in other signatory states. See Strub (n 55) 1031 (discussing the challenges posed by the requirement to recognise all awards issued in signatory states).

insurance products or any products issued consistent with the Cooperative Health Insurance Law.⁶⁴ Also, prior to the enactment of the CICCL and the establishment of Insurance Dispute Committees (IDCs), insurance disputes were resolved either by the Ministry of Commerce or the Board of Grievances.⁶⁵ Thus, the CICCL solidified the shift towards alternative dispute resolution mechanisms. ADR forms such as arbitration have since become more acceptable as a viable form of dispute resolution.

The first important factor in gaining acceptance was the Arbitration Regulation's provision that an arbitration clause must simply be in writing and signed by parties with competent authority to enter in the agreement.⁶⁶ In contrast, under the old regime, an arbitration clause had to be drafted in Arabic and pre-approved by Ministry of Commerce and Industry. If a clause did not meet these requirements, it was open to challenge and resulted in a *Shariah* court assuming jurisdiction of the dispute. As such, arbitration under the new regime does not function as part of the judicial system given that courts are no more instrumental before the rendering of an arbitral award. Following the shift initiated by the CICCL and Arbitration Regulation, courts and administrative tribunals in the KSA uphold arbitration clauses contained in insurance policies. The Arbitration Regulation reiterated the commitment of the KSA under the New York Convention to recognise and enforce international arbitration agreements and awards. However, unlike the New York Convention, the Regulation compels Saudi courts and government agencies to recognise all agreements and awards of other signatory states. Article 3 of the Regulation provides that arbitration is deemed to be international arbitration 'if the subject matter thereof relates to international trading' where the head offices of each of the parties are, at the time of signing the arbitration agreement, located in more than one country or the place for conducting the arbitration as designated in the agreement or where the place of execution of a substantial part of the parties' obligations is outside of the KSA. Article 3 also recognises arbitration as international arbitration where the place most closely related to the subject matter of the dispute is another country.

As such, the Arbitration Regulation effectively recognises arbitration as an ADR form rather than an extension or another form of litigation. However, this does not imply that arbitration is

⁶⁴ A Haberbeck, 'Risk Sharing in an Islamic Society' (1987) 2 *Arab Law Quarterly* 138, 145.

⁶⁵ Article 22 of the CICCL still grants the Board of Grievances jurisdiction for disputes between insurance companies and re-insurance companies, disputes related to the violation of the CICCL, and cases where the Saudi Arabian Monetary Agency (SAMA) or an IDC imposes the sanction of imprisonment.

⁶⁶ See Arbitration Regulation, Articles 9(2) and 10(1).

necessarily more effective than the administrative tribunal model, given that the IDC also operates outside of the formal court system. It is true that unlike negotiation and mediation, there are specific rules and guidelines that govern the way arbitration is conducted. However, the parties do not have complete freedom to agree on all aspects of arbitration. This is shown in the examination of the rules and guidelines below.

4.3.3.3.1 The Decision to Arbitrate

As with any form of ADR, the agreement to arbitrate must be made mutually among the parties. They have the autonomy to decide where, how, and by whom a dispute will be decided. Article 11 of the Arbitration Regulation requires the court to decline jurisdiction where there is an arbitration agreement and one party has sought referral of the dispute to arbitration before making a claim or defence in court.⁶⁷ Also, Article 20 of the Regulation provides that the arbitral tribunal may settle pleas of non-jurisdiction and those related to alleged ambiguities or defects in the arbitration agreement. Hence, the Regulation adopts the principle of competence-competence whereby the arbitral tribunal is empowered to decide its own jurisdiction or competence.⁶⁸ As noted above, in order for the agreement to arbitrate to be enforceable, the arbitration agreement must be in writing.⁶⁹ While traditionally most arbitration agreements are entered into at the time of the contract and prior to the occurrence of a dispute, under the Arbitration Regulation, an arbitration agreement can be concluded either prior to the dispute or after the occurrence of the dispute.⁷⁰ Regardless of when the arbitration agreement is entered into, it must include the matters to be arbitrated.⁷¹

The above notwithstanding, there is insufficient guidance regarding the assessment of the arbitrability of claims under the Regulation. Apart from the fact that a clause or agreement that violates the *Shariah* or deals with ‘personal affairs’ would be unenforceable,⁷² it is uncertain

⁶⁷ See the decision of the Court of Appeal in Commercial Case No. 270/TG/1 1434H, Date of hearing July 14, 2013. The Court of Appeal applied the Arbitration Regulation of 2012.

⁶⁸ The origin of the principle may be traced to the German concept of *Kompetenz-Kompetenz* and the French principle of *competence de la competence*. See A Kawharu, ‘Arbitral Jurisdiction’ (2008) 23 *New Zealand Universities Law Review* 238, 240-243. For an analysis of the principle, see J Petkute-Guriene, ‘The Competence-Competence Principle in Commercial Arbitration: A Comparative Analysis’ (2017) 5 *Social Transformations in Contemporary Society* 88, 89-97.

⁶⁹ Arbitration Regulation, Article 9.

⁷⁰ *ibid.*

⁷¹ *ibid.*

⁷² *ibid.*, Articles 2 and 25. There is a personal affairs court that has jurisdiction to decide disputes related to family matters such as divorce, proof of marriage, custody and appointment of guardians. See M Al-Ghamdi and PJ

what jurisdictional limitations arbitral tribunals face when dealing with claims. Carbonneau notes that the ‘public dimension of the issues raised by commercial conduct can sometimes warrant exclusive judicial jurisdiction.’⁷³ However, in many Western states, there has been a shift of policy regarding the potential non-arbitration of statutory claims. Arbitral tribunals are increasingly competent to decide disputes that involve public law claims or reflect national public policies.⁷⁴ In the KSA, it is still uncertain whether arbitral tribunals can decide disputes involving public law claims. Thus, it may be safer for parties to refer disputes that are related to public claims to the IDC.

4.3.3.2 Initiation of Arbitral Proceedings

Arbitration proceedings can be initiated by the parties either by directly invoking the arbitration clause and engaging the arbitral process or in the event that either party files a suit with the court and raises the issue of the arbitration agreement.⁷⁵ In the latter case, the court or IDC must decline jurisdiction and refer the dispute to arbitration. Additionally, at any point during court or IDC proceedings, the parties may agree to transfer the dispute to arbitration.⁷⁶ The arbitration proceedings formally commence on the date that the request for arbitration by one party is received by the other party.⁷⁷ Where many parties are involved, Article 11 of the Implementing Regulations provides that the proceedings commence on the date that the last party receives the request for arbitration. Article 9 of the Implementing Regulations also sets out matters that must be included in the request for arbitration. It is nonetheless uncertain whether the proceedings may be deemed to have commenced where the party requesting arbitration does not fully comply with Article 9 of the Implementing Regulations. Also, no distinction is made between natural and artificial persons or corporate bodies. This is important because although Article 10 of the Arbitration Regulation allows corporate persons to enter into arbitration agreements, it is uncertain whether an insurance company would be bound by the agreement entered into by mid-level managers regarding for example the seat of arbitration or the applicable law.⁷⁸ It follows that it may be safer for the parties to submit the dispute to

Neufeld, ‘Saudi Arabia’ in D Taylor (ed), *Dispute Resolution Review* (9th edn, Law Business Research 2017) chapter 32.

⁷³ TE Carbonneau, *Cases and Materials: Arbitration Law and Practice* (6th edn, West 2007) 1. See also, TE Carbonneau, ‘The Revolution in Law through Arbitration’ (2008) 56 *Cleveland State Law Review* 233, 235.

⁷⁴ See TE Carbonneau, *The Law and Practice of Arbitration* (6th edn, Juris 2018) xiii, 28.

⁷⁵ Arbitration Regulation, Article 11.

⁷⁶ Ibid, Article 12.

⁷⁷ Ibid, Article 27.

⁷⁸ Article 10(2) provides that government bodies may not enter into arbitration agreements unless allowed by a special provision of a regulation or upon approval by the competent minister.

the IDC, given that its jurisdiction does not depend on a clause in the contract or agreement between the parties.

4.3.3.3 Composition of the Tribunal

The arbitral tribunal refers to a panel of one or more arbitrators that will preside over the arbitration proceedings.⁷⁹ Article 27 of the Arbitration Regulation provides that an arbitral tribunal may consist of a single arbitrator or many arbitrators, and in the event that there are multiple arbitrators, the total number of arbitrators must be an odd number. Article 13 provides that where the total number of arbitrators is not an odd number, the arbitration is void. This shows limitations placed on the freedom of the parties to select the arbitrators. Also, where the parties choose Saudi law as the governing law, their discretion in selecting arbitrators is further limited given that they are required to comply with Article 14 of the Arbitration Regulation that lists conditions that each arbitrator must fulfil. These conditions include ‘holder of at least a university degree in *Shariah* or law.’

When it comes to selecting the arbitrators, the parties to the arbitration must agree on the appointment of the arbitral tribunal.⁸⁰ In the event that the parties cannot agree, the process for selecting arbitrators depends on the number of arbitrators designated to serve on the tribunal in the arbitration agreement. If the arbitral tribunal is to be composed of one arbitrator, the competent court, the Court of Appeal, appoints the arbitrator.⁸¹ If the agreement provides for multiple arbitrators, each party appoints one arbitrator and the two arbitrators appoint the third arbitrator.⁸²

To be eligible to serve as an arbitrator, where the parties have chosen Saudi law as the governing law, an individual must be of full legal capacity and be of good conduct and reputation.⁸³ Further, if the arbitral tribunal is composed of a single arbitrator, that individual must hold a university degree in *Shariah* or law.⁸⁴ If the tribunal is composed of multiple arbitrators, only the chairman of the tribunal must meet the education requirement.⁸⁵ This is a

⁷⁹ See JB Simmons, ‘Valuation in Investor-State Arbitration: Toward a More Exact Science’ (2012) 30 *Berkeley Journal of International Law* 196, 196-197.

⁸⁰ Arbitration Regulation, Article 15.

⁸¹ Ibid, Article 15(1)(a).

⁸² Ibid, Article 15(1)(b).

⁸³ Ibid, Article 14(1)-(2).

⁸⁴ Ibid, Article 14(3).

⁸⁵ Ibid.

marked improvement from the old regime given that there are no requirements regarding gender or nationality. Nonetheless, since emphasis is placed on the arbitrator's grasp of the *Shariah*, there is the risk that the parties may appoint an arbitrator who fulfils the conditions set out in Article 14 but is not technically competent.

The above notwithstanding, the most important quality of the arbitrator is the ability to serve as an independent and neutral third party. Article 16(1) of the Arbitration Regulation provides that the arbitrators must have no vested interest in the dispute. Additionally, from the time of appointment and for the duration of the proceedings, the arbitrators are required to disclose in writing any circumstances that could give rise to justifiable doubts as to their impartiality or independence. Article 16(2) also bars an arbitrator from presiding over any case for which a judge would be barred and must recuse himself from the proceedings, even if neither party requests this recusal. This follows from the traditional conception of the role of arbitrator as akin to that of a trial judge who has a reputation for impartiality and fairness. The first Caliph of the Ummayyad dynasty, Mu'awiya, set up a judicial system that comprised trial judges and arbitrators with the authority to hear disputes and render and execute their decisions.⁸⁶ However, in the present day, trial judges and other state-appointed tribunal members are connected to the government, while arbitrators are private actors in the dispute resolution context who must be paid for their services directly by the parties.⁸⁷ If the parties and arbitrators cannot come to an agreement on fees, the competent court will decide the fees in a non-appealable decision.⁸⁸ The fact that arbitrators are private actors largely limits their ability to determine the arbitrability of statutory claims. This is another major shortcoming of arbitration in the KSA.

4.3.3.3.4 Conducting the Proceedings

The parties are accorded significant autonomy to decide where the proceedings will take place and the procedures to be followed.⁸⁹ The parties may for example agree on any venue for the arbitration, whether within the Kingdom or in another country.⁹⁰ If the parties fail to agree on

⁸⁶ See M Khadduri, *War and Peace in the Law of Islam* (The Lawbook Exchange 1995) 231-238, 242 (provides a comprehensive analysis of the rise and fall of arbitration in Islamic countries). See also J Schacht, *An Introduction to Islamic Law* (Clarendon Press 1964) 188-191.

⁸⁷ Arbitration Regulation, Article 24.

⁸⁸ Ibid.

⁸⁹ Ibid, Articles 4 and 25.

⁹⁰ Ibid, Article 28.

a venue, the arbitral tribunal will choose the venue taking into consideration the circumstances of the case and the convenience of the venue to both parties.⁹¹

Among the parties' choices for procedures are the procedural rules of any organisation, agency or arbitration centre within the Kingdom or in another country.⁹² The government established the SCCA with the expectation that many parties will nominate this organisation in their arbitration agreements. However, the freedom to select the rules to govern the arbitration or enforcement taking place within the Kingdom is also limited. This is because the rules cannot conflict with the principles of the *Shariah*.⁹³ Thus, if the parties fail to determine the procedures for the arbitration, the arbitral tribunal may decide the procedures as it deems fit, again subject to the principles of the *Shariah* and the Arbitration Regulation.⁹⁴ It should be noted that the KSA adopted a generally accepted principle of arbitral proceedings which is to the effect that parties are guaranteed all of the same rights of fairness that would have been accorded to them had they pursued the dispute through litigation.⁹⁵ Thus, arbitration does not necessarily provide any advantage to the parties as regards the freedom to choose the procedural rules and venue.

The proceedings themselves are to be conducted in Arabic unless the tribunal or the parties agree on another language for the arbitration.⁹⁶ Once the tribunal has been assembled, a time period will be set either by the parties or the tribunal for the plaintiff to send to the defendant a written statement of his claim that includes the full facts of his claim, any demands, and evidence to support his claim.⁹⁷ The defendant will then have a reasonable period of time in which to send his response that includes any demands connected to the subject-matter of the dispute and the assertions of any rights or defences.⁹⁸ In addition to evidence initially submitted by the parties with their pleadings, the arbitrators may request supplementary evidence to be submitted at any time throughout the proceedings.⁹⁹ If the plaintiff fails to submit his written

⁹¹ Ibid, Article 28. In addition to the seat of the arbitration, the tribunal may convene at any venue throughout the course of the proceedings for deliberation, to hear experts' testimony, to conduct investigations, or examine or review documents. *ibid*.

⁹² Ibid, Article 25.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ P Dobias, 'Rights and Duties of Parties in Insurance Arbitration' (2015) 15 *Czech (& Central European) Yearbook of Arbitration* 43, 44.

⁹⁶ Arbitration Regulation, Article 29.

⁹⁷ Ibid, Article 30.

⁹⁸ Ibid.

⁹⁹ Ibid.

claim, the proceedings will terminate.¹⁰⁰ If the defendant fails to submit his written response, the proceedings shall continue on the basis of the plaintiff's filings.¹⁰¹ If at any point either party fails to appear for a hearing or respond to a discovery request, the proceedings will continue and the tribunal will render a decision based on the information presented before it.¹⁰²

Once initial filings have been completed, the tribunal will hold hearings at which the parties may present their cases and submit their arguments for review.¹⁰³ An underpinning principle in the Arbitration Regulation is that the parties must be treated equally and each party must be given a full and equal opportunity to present his case or defences.¹⁰⁴ When it comes to the substantive matters of the case, the governing law for the dispute is again determined by the parties, typically in the arbitration agreement.¹⁰⁵ Also, elements of the law must not conflict with the principles of the *Shariah*.

The above guidelines clearly enable the parties to estimate what will happen if they submit their disputes to arbitration. This is no doubt an important advantage over other forms of ADR such as negotiation and mediation. However, the Arbitration Regulation does not nearly provide the complete picture of what is to be expected. It is for example silent on the specific documents that should be submitted during disclosure. Article 30 simply contemplates that all supporting documents that support the parties' claims or defences will be submitted. Given that there are equally no rules governing the mandatory disclosure of evidence during litigation¹⁰⁶ or proceedings in the IDC, it may be contended that Saudi legislators assumed that disclosure under the Arbitration Regulation is based on the principles of the *Shariah*. These principles require litigants to submit all the evidence upon which they rely as well as any relevant evidence, whether unfavourable or not to their case. The courts and Committees of the IDC like the arbitral tribunal, are also empowered to compel disclosure of any document or evidence in a party's possession. However, unlike the IDC, the court still retains certain powers of intervention in the arbitral process. Article 22(3) of the Arbitration Regulation provides that the arbitral tribunal may, if it deems appropriate, seek the court's assistance regarding the

¹⁰⁰ Ibid, Article 34.

¹⁰¹ Ibid.

¹⁰² Ibid, Article 35.

¹⁰³ Ibid, Article 33.

¹⁰⁴ Ibid, Article 27.

¹⁰⁵ Ibid, Article 38(1)(a).

¹⁰⁶ See Law of Procedure of *Shariah* Courts enacted by Royal Decree No. M/21 20 Jumada I, 1421 (August 19, 2000).

proper conduct of the arbitral proceedings in relation to matters such as ordering disclosure and summoning witnesses. Other provisions that give the Court of Appeal powers of intervention include Article 15 which provides that it is the appointing body for the arbitral tribunal where the parties fail to agree on persons to be selected as arbitrators; and Article 22(1) which provides that the Court of Appeal may order precautionary measures following a pre-arbitration request by a party or a request by the arbitral tribunal during the arbitration. Thus, given the absence of clear guidelines regarding disclosure, it is highly probable that the arbitral tribunal would seek the court's assistance in order to prevent a subsequent invalidation of the award by the Court of Appeal.

4.3.3.3.5 Rendering Decisions

Once the arbitrators have heard the arguments of both sides and received sufficient evidence and expert testimony, they make a final decision. The tribunal's decision-making process is subject to the principles of the *Shariah* and public policy within the Kingdom,¹⁰⁷ and arbitrators must consider the following when rendering a final decision: the applicable statutory substantive rules agreed upon by the parties; the terms of the contract that is the subject of the dispute; any prevailing customs and practices related to the contract; and the parties' prior course of dealing.¹⁰⁸ The question of the applicable statutory substantive rules is important because it may determine whether the claim can be arbitrated. This is a major shortcoming of arbitration in the KSA because although the arbitral tribunal is competent to rule on its own jurisdiction (competence-competence principle), it may not rule on statutory provisions related to public interest. However, the IDC, an administrative body, may rule on provisions related to public interest.

If the arbitration is presided over by a single member, the arbitrator will render a decision. If the arbitral tribunal is composed of three or more members, the latter will deliberate *in camera* and come to a final decision based on majority votes.¹⁰⁹ As noted above, the tribunal must issue the arbitral award within twelve months from the date of the commencement of arbitral proceedings. If an award is not issued within this timeframe, a party may appeal to the Court of Appeal to issue an order to terminate the proceedings.

¹⁰⁷ Arbitration Regulation, Article 38.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid, Article 39.

Also, as noted above, once an arbitral award is issued, the award acquires the force of *res judicata* and is enforceable to the same extent as the order of any domestic court or administrative tribunal within the Kingdom. Unlike judicial proceedings, arbitral awards are final and binding and are not subject to appeal.¹¹⁰ The only process for challenging an award is through invalidation or annulment. Once an award is issued, the parties have sixty days in which they can argue that the award should be invalidated.

The limited grounds for invalidation of the award include: the lack of a valid arbitration agreement; the lack of capacity of either party to enter into the arbitration agreement; failure to notify parties of the appointment of arbitrators or initiation of proceedings; the tribunal's failure to apply the rules chosen by the parties; the tribunal's composition or appointments violate the Arbitration Regulation or the agreement of the parties; the award exceeds the scope of the issues submitted to arbitration; and the tribunal failed to observe conditions required for the award in a manner that affects its substance.¹¹¹ Additionally, the Court of Appeal, upon its own initiative, can invalidate the award if it violates principles of the *Shariah* or the Kingdom's public policy; the parties are not in a position to raise this issue.¹¹² The Court of Appeal's review of the arbitral award is limited to the grounds for invalidation, and theoretically, it may not review or decide on the underlying facts or subject matter of the dispute.¹¹³

The fact the Court of Appeal may *sua sponte* consider the arbitral award's conformity to the principles of the *Shariah* and invalidate the award if the Court determines that it violates these principles implies that the Court of Appeal can independently analyse the case and issue its own decision. Thus, the provision that the Court of Appeal does not review or decide on the underlying facts or subject matter of the dispute is moot. If it can assess the *Shariah*-compatibility of the award, it must invariably go beyond the facts stated in the award. It follows that the parties' choice of arbitrator should be limited to persons who have a large fund of information concerning what is allowed or prohibited under the *Shariah* as it applies in the KSA. Hence, the arbitrator must be as knowledgeable as a trial judge and member of the IDC.

¹¹⁰ New Arbitration Law, Article 49.

¹¹¹ Ibid, Article 50.

¹¹² Ibid, Article 50(2).

¹¹³ Ibid, Article 51(4). However, it is noted above that in *Jadawel International (Saudi Arabia) v Emaar Property PJSC (UAE)* ICC (2006), the Board of Grievances reviewed the underlying facts, invalidated the award and issued a new decision on the merits of the case.

4.3.3.4 The Choice of Arbitration

Any time an industry witnesses significant and continuous growth, particularly in the attraction of international investors, such growth is often coupled with an increase in claims and disputes.¹¹⁴ The timeous and effective resolution of these disputes plays a significant role in furthering the development and success of the industry.¹¹⁵ In the face of slow-paced and rules-laden litigation procedures and the need for some level of confidence in pursuing dispute resolution, arbitration has no doubt risen as a viable non-court alternative. However, the question here is not whether it is better than litigation but whether it is also better than the administrative tribunal model that has been adopted by the government of the KSA to deal with insurance disputes. Following the analysis of the arbitration regime in the KSA, it may be said that there are important advantages and disadvantages for policyholders who choose this form of ADR for the resolution adverse insurance coverage disputes. This section discusses the advantages and disadvantages.

It is noted above that, historically, the KSA was slow in keeping up with the global trends in commercial arbitration. In fact, prior to enactment of the Arbitration Regulation in 2012 and the Implementing Regulations in 2016, the last time the KSA updated its arbitration regime was when the Regulation of 1983 was enacted. While under the old regime, arbitration proceedings were not viewed as an effective means for the resolution of many disputes, the Arbitration Regulation of 2012 has enabled the KSA to align its law with the prevailing arbitration provisions of many nations. By modelling the Regulation on the UNCITRAL Model Law, the KSA aligned itself with international standards by affording greater independence to the arbitral process and its participants, enhancing the procedural powers of the arbitral tribunal, and clarifying and strengthening its position on the enforcement of arbitration agreements and awards.¹¹⁶ The Saudi government itself had recognised the need for arbitration to resolve many commercial disputes, particularly within the area of international trade.¹¹⁷ This was a reflection of the rise in the use of arbitration proceedings within the commercial sphere around the globe. However, this does not imply that arbitration is the best forum for all types

¹¹⁴ See R Awwad et al, 'Understanding Dispute Resolution in the Middle East Region from Perspectives of Different Stakeholders' (2016) 32(6) *Journal of Management in Engineering* 1, 2.

¹¹⁵ SI Strong, 'The Special Nature of International Insurance and Reinsurance Arbitration: A Response to Professor Jerry' (2015) 15(2) *Journal of Dispute Resolution* 283, 283.

¹¹⁶ See Abbadi (n 56) 82-83, 245-246.

¹¹⁷ A Al-Ghadyan, 'The Changing Phases of Arbitration in Saudi Arabia' (1997) 63 *Arbitration-London* 132, 133.

of commercial disputes. Hence, the KSA is faced with the challenge of frustrating a number of businessmen and investors (mostly foreign or non-Muslim) who may run away from an unfamiliar forum (Saudi courts) to one that meets the structural needs of the industry but does not necessarily guarantee enforceability in the Kingdom. Thus, in order for arbitration to be considered a better forum for insurance dispute resolution, it must be shown to provide a comprehensive set of potential remedies to policyholders such as the administrative tribunal model, and it must also be shown that it enables parties to avoid or reduce the expenses, delay and unpredictability of litigation. Also, it must be shown to be more flexible regarding the application of Saudi law, especially where the place of execution of a substantial part of the parties' obligations is outside of the KSA or where another country is more closely related to the subject matter of the dispute.

The changes enacted by the Arbitration Regulation of 2012 provide numerous advantages to those seeking to resolve insurance disputes within the Kingdom, specifically when international elements are involved. These advantages are applicable in both the domestic and international contexts. In this section, the advantages and disadvantages are discussed under the five criteria for judging the quality of a dispute resolution option

4.3.3.4.1 Cost and Duration

An important advantage of arbitration with regard to insurance dispute resolution is the ability to achieve an expedited resolution. In the insurance sector, it is important to resolve disputes quickly because by nature of the claim giving rise to the dispute; a party is facing the occurrence of a detrimental event.¹¹⁸ Article 40 of the Arbitration Regulation requires arbitrators to render their decision within twelve months of the initiation of arbitration proceedings. In comparison, a study on the duration of litigation involving physicians in the KSA revealed that seventy per cent of cases lasted for two years or more.¹¹⁹ This is similar to the findings of another study that eighty per cent of litigations in the KSA lasted for more than two years.¹²⁰

¹¹⁸ Dobias (n 95) 44.

¹¹⁹ SA Alkindy, 'Expatriate Doctors, Medical Litigations and Overall Patient Care: Taif Study' (2016) 4 *Saudi Surgery Journal* 104, 104-107.

¹²⁰ E Habib, 'Obstetricians' Perception of Medico-Legal Problems in Al Madinah Al Munawarah Kingdom of Saudi Arabia' (2010) 5 *Journal of Taibah University Medical Sciences* 66, 66-74.

Alkhenizan and Shafiq contend that the protracted duration of litigation involving medical professionals in the KSA is due to the fact that they were carried out through the *Shariah* Medical Panels which is a judicial committee and not a traditional court.¹²¹ Hence, litigation through traditional courts ensures expedited processing and timely determinations when compared to administrative tribunals. However, the data collected by the General Secretariat which shows that a case brought for resolution before the IDC can take up to six months at the initial stage and another six months or longer if appealed.¹²² Nonetheless, the IDC rules do not provide any guidance on a timeframe within which a case must be concluded, leaving the parties with significant uncertainty as to how long their case will continue.¹²³ As such, arbitration has an advantage over litigation and the administrative tribunal model regarding timely determinations.

Given the expediency with which a dispute is resolved through arbitration, the parties may sometimes benefit from cost savings.¹²⁴ Although they are required to pay the arbitrators (they would not have to pay IDC members and trial judges), the speed with which the case is resolved can avoid sunk costs and significantly reduce the legal fees associated with bringing or defending a claim. However, where the arbitral award was issued in another country or in a language other than Arabic, the enforcing court in the KSA may require the arbitration agreement and arbitral award to be translated accurately, as well as a written verification from the arbitral tribunal and a translated transcript of the arbitration proceedings. These may then add layers of formality, time and cost.¹²⁵

4.3.3.4.2 *Shariah Compliance*

The Arbitration Regulation and New York Convention do not provide narrow grounds for annulling arbitral awards or refusing to enforce them. As noted above, the Court of Appeal, upon its own initiative, can invalidate an arbitral award if it violates principles of the *Shariah*

¹²¹ AH Alkenizan and M Shafiq, 'The Process of Litigation for Medical Errors in Saudi Arabia and the United Kingdom' (2018) 39(11) *Saudi Medical Journal* 1075, 1080.

¹²² This is discussed further in Chapter 5.

¹²³ This is a shortcoming of the administrative tribunal model that is discussed in chapter 3. It is also one of the only two causes of users' dissatisfaction with the IDC as shown in Chapter 5.

¹²⁴ See G Sayen, 'Arbitration, Conciliation, and the Islamic Legal Tradition in Saudi Arabia' (2003) 24(4) *University of Pennsylvania Journal of International Economic Law* 905, 920.

¹²⁵ KT Roy, 'The New York Convention and Saudi Arabia: Can a Country Use the Public Policy Defense to Refuse Enforcement of Non-Domestic Arbitral Awards?' (1994) 18(3) *Fordham International Law Journal* 920, 938; J El-Haklim, 'Enforcement of Foreign Judgments and Arbitral Awards in Syria' (1990) 5 *Arab Law Quarterly* 137, 141-142.

or the Kingdom's public policy. Thus, the Court of Appeal independently analyses the case and issues its own decision regarding the *Shariah*-compliance of the procedure and award. Also, Article V (2) (b) of the New York Convention allows signatory states to refuse to enforce non-domestic awards that are contrary to their public policy. This provides a safe harbour wherein the KSA may align its laws to international norms without undermining its public policy, history and religion.

Roy argues that Article V (2) (b) of the Convention enables the KSA to enforce non-domestic arbitral awards in the same way as it did prior to its accession to the New York Convention.¹²⁶ It suffices that the Board of Grievances determines that the non-domestic award is contrary to the Kingdom's public policy. This is the same discretion given to the Court of Appeal to invalidate arbitral awards in the KSA that violate the *Shariah*. As such, the arbitrator must ensure that the outcome is *Shariah*-compliant, else the entire process would serve no purpose.

4.3.3.4.3 Flexibility

Another primary draw of the arbitration process is its overall flexibility and accordance of party autonomy in resolving disputes.¹²⁷ Instead of being bound to particular procedural or substantive codes, the parties have the ability to agree on the arbitration rules that will serve as the procedural framework for the proceedings, as well as the substantive law that will govern the dispute.¹²⁸ The parties also have the freedom to decide where an arbitration will be seated or take place as opposed to litigation and IDC proceedings where the competent jurisdiction and venue are decided on a territorial basis. As such, arbitration basically empowers parties to create a framework outside of the court system for the resolution of their disputes.

Further, the parties have the ability to choose the law governing the dispute. For domestic arbitrations, the choice of law must be compliant with *Shariah* principles. The decision of the applicable law therefore enables the parties to opt-out of disfavoured legal systems and avail themselves of the provisions of other insurance regimes.

¹²⁶ Roy, *ibid*, 924-928.

¹²⁷ Sayen (n 124) 920-923; KM Blankey, 'Keeping a Secret from Yourself? Confidentiality When Same Neutral Serves Both as Mediator and as Arbitrator in the Same Case' (2011) 63 *Baylor Law Review* 317, 326; GF Phillips, 'Same-Neutral Med-Arb: What Does the Future Hold?' (2005) 60 *Dispute Resolution Journal* 24, 28-32; JT Brewer and LR Mills, 'Med-Arb: Combining Mediation and Arbitration' (1999) 54 *Dispute Resolution Journal* 32, 34.

¹²⁸ A Redfern and M Hunter, *Redfern and Hunter on International Arbitration* (5th edn, Oxford University Press, 2009) 1-4.

Once the procedural and substantive provisions have been established, the parties also have the ability to determine who will hear their dispute. Parties can choose arbitrators either at the time of signing an arbitration agreement or they can agree to a provision on how arbitrators will be selected in the event a dispute arises. The choice of arbitrators is a key benefit to the use of arbitration over litigation proceedings where trial judges are imposed on the parties.

Another area of flexibility regarding the Arbitration Regulation in the KSA is the option to conduct proceedings in languages other than Arabic. Under the IDC Working Rules, all pleadings and hearings are to be submitted and conducted in Arabic. However, under the Arbitration Regulation, the parties may choose the language in which to conduct proceedings. This is important for the resolution of insurance disputes as there are often foreign investors involved that speak different languages and have different customs.¹²⁹ Thus, the flexibility and party autonomy provided for by the Arbitration Regulation underscore the consensual nature of arbitration proceedings. These provisions allow parties to have confidence in the dispute resolution process because they exercise a significant degree of control over how the arbitration will proceed.

However, flexibility of the process is very limited because of restrictions placed on the freedom of the parties to select the rules to govern the arbitration or enforcement taking place within the Kingdom. The procedural and substantive rules cannot conflict with the principles of the *Shariah*. Hence, the parties to the arbitration are simply guaranteed all of the same rights of fairness that would have been accorded to them had they pursued the dispute through the IDC. It follows that arbitration is very similar to the administrative tribunal model and does not confer any unique advantage. Also, the emphasis on the arbitrator's grasp of the *Shariah* creates a high risk of the parties appointing an arbitrator who fulfils the conditions set out in Article 14 of the Arbitration Regulation but who is not technically competent. Then the absence of clear guidelines regarding disclosure makes it highly probable that the arbitral tribunal would seek the court's assistance in ordering disclosure and summoning witnesses in order to prevent a subsequent invalidation of the award by the Court of Appeal.

¹²⁹ M Almushaigeh, 'The Legitimacy of Arbitration in Islamic Law 'Shari'a' (2016) 2 *Islamic Law Magazine at Indiana University* 9, 9.

4.3.3.4.4 Impartiality

The impartiality of the arbitrators is key to ensuring the independence of the arbitral tribunal and that the resulting award is not tainted by bias.¹³⁰ Allowing the parties to choose the arbitrators gives them the control to choose individuals whom they know are independent and impartial with regard to the case at hand.¹³¹ However, in reality, parties sometimes prefer an arbitrator whom they believe will find their position persuasive.¹³² While each party may choose one arbitrator, the parties must either agree on the third arbitrator or allow their chosen arbitrators to appoint the third arbitrator. This safeguard ensures that the parties receive fair consideration of their dispute.¹³³ This is especially important regarding insurance disputes because insurance companies are in a better position to choose from a pool of arbitrators who understand how policies are drafted and coverage determinations made and may have arbitrated in other disputes involving the same insurance companies. Policyholders on the other hand are less likely to know such arbitrators because they often deal with arbitrators just once.¹³⁴

However, when an arbitrator is requested to serve on an arbitral tribunal, the arbitrator has a duty to notify the parties of any facts or circumstances that would call into question the arbitrator's impartiality.¹³⁵ Article 16 of the Arbitration Regulation preserves this impartiality by requiring that an arbitrator have no vested interest in the dispute.¹³⁶ Nonetheless, it is noted above that an insurance company may defeat this provision by naming friendly arbitrators in contracts of adhesion whereby the policyholder is not empowered to negotiate or counter the company's offer. This may not happen in the IDC given that the parties cannot select the

¹³⁰ N Blackaby and C Partasides, *Redfern and Hunter on International Arbitration* (6th edn, Kluwer Law International 2015) 1.

¹³¹ See Arbitration Regulation, Article 16. See also, Dobias (n 95) 44.

¹³² *ibid* 45.

¹³³ Although this is the ideal, in practice, a large insurance company may include the name of a single arbitrator within the insurance contract that the policyholder is to sign. In such cases of contracts of adhesion, the policyholder has little room for negotiation. Large insurance companies may therefore easily abuse the autonomy provided by the law to choose arbitrators by compelling the policyholder to accept someone that the company believes will find in its favour. See Dobias (n 95) 44-45.

¹³⁴ This leads to the repeat player effect whereby those who have dealt with the same arbitrator many times in the past have an advantage. See AJS Colvin, 'An Empirical Study of Employment Arbitration: Case Outcomes and Processes' (2011) 8(1) *Journal of Empirical Legal Studies* 1, 1-23; L Bingham, 'Employment Arbitration: The Repeat Player Effect' (1997) 1 *Employee Rights and Employment Policy Journal* 189, 189-220.

¹³⁵ See P Dobias, 'The Distinctive Features of Independence and Impartiality of Arbitrators in Insurance Matters' in Belohlavek A and Rozehnalova N (eds), *Independence and Impartiality of Arbitrators – Czech (& Central European) Yearbook of Arbitration* (Juris Publishing 2014) 25.

¹³⁶ One interesting note about Article 16 is that it provides that '[a]n arbitrator shall be barred from considering or hearing a case for the same reasons for which a judge is barred'; however, with regard to insurance disputes, the competent 'judges' are the members of the IDC and the Working Rules do not contain provisions about the recusal of members.

members of the Committee. Hence, there is a risk that the neutrality provisions of the Arbitration Regulation may be abused, making arbitration less attractive than the administrative tribunal model for the parties with weaker bargaining power such as policyholders.

One of the most often cited benefits of arbitration related to impartiality and neutrality is the privacy accorded to the parties during arbitration proceedings.¹³⁷ Unlike suits brought before trial judges or quasi-judicial authorities that are public in nature, arbitration provides a private and confidential means for settling disputes. Article 43(2) of the Arbitration Regulation provides that the decision of the arbitral tribunal may only be released and published if the parties so agree. This is often attractive to policyholders who would prefer to keep their matters private, as well as to insurance companies which do not want proceedings or decisions to establish a negative precedent upon which future policyholders can rely.¹³⁸ During the proceedings, insurance companies may make claims or adopt inconsistent positions knowing that their arguments will remain confidential and no other form of recourse is available to the policyholders.

However, the Arbitration Regulation is silent on the issue of confidentiality, specifically. Also, there are no privacy laws in the KSA that protect the confidentiality of such processes.¹³⁹ Reuben noted that many commentators mistakenly conflate ‘privacy’ and ‘confidentiality’ or use them as synonyms when discussing arbitral proceedings.¹⁴⁰ Schmitz equally noted that ‘arbitration is private but not confidential ... Arbitration is private in that it is a closed process, but it is not confidential because information revealed during the process may become public.’¹⁴¹ As such, Article 43(2) of the Arbitration Regulation guarantees privacy because it excludes non-parties from the hearing, precludes the arbitrator from disclosing information about the proceedings, and provides that the arbitral proceedings or award cannot be published

¹³⁷ See LL Riskin et al, *Dispute Resolution and Lawyers* (3rd edn, West Publishing Co 2005) 13-18, 654; C Menkel-Meadow et al, *Dispute Resolution: Beyond the Adversarial Model* (Aspen 2005) 449; SB Goldberg et al, *Dispute Resolution: Negotiation, Mediation and Other Processes* (4th edn, Little Brown 2003) 210; KVV Stone, *Private Justice: The Law of Alternative Dispute Resolution* (Foundation Press 2000) 2-8.

¹³⁸ See K Noussia, *Confidentiality in International Commercial Arbitration: A Comparative Analysis of the Position under English, US, German and French Law* (Springer 2010) 79.

¹³⁹ Article 40 of the Basic Law (Royal Decree No. A/90 Shaban 1412 H, March 1, 1992) simply safeguards private communications from confiscation, listening or reading except where required by statute.

¹⁴⁰ RC Reuben, ‘Confidentiality in Arbitration: Beyond the Myth’ (2006) 54 *University of Kansas Law Review* 1255, 1260.

¹⁴¹ AJ Schmitz, ‘Untangling the Privacy Paradox in Arbitration’ (2006) 54 *University of Kansas Law Review* 1211, 1211.

in part or whole without the written consent of the parties to the arbitration. However, this does not extend to forbidding the parties from disclosing the existence of the arbitration or its outcome. Hence, the parties to the arbitration are essentially provided the same protection as disputants in the IDC as regards privacy. This is because although some of the decisions of the Primary Committees are published on the General Secretariat's website, the names of the parties are not included. It follows that arbitration does not provide a unique benefit of privacy in the KSA.

4.3.3.4.5 Predictability

Another advantage of arbitral proceedings is that the process is typically the same among varying arbitral institutions, seats, and ad hoc models. Given that most countries now base their arbitration laws on the UNCITRAL Model Law, there are significant similarities between their arbitration regimes.¹⁴² Thus, parties that are familiar with arbitration in one country will be generally prepared to engage in arbitration even if in a new country or seat. This is in contrast to litigation proceedings that vary significantly from jurisdiction to jurisdiction, and even among courts and tribunals for different subject matters within the same jurisdiction. A party may for example be unfamiliar with the IDC process for resolving an insurance dispute but may be quite familiar with the arbitration of insurance disputes and opt for the latter method as a result.

One of the reasons why the outcome of arbitration is more predictable than the other forms of dispute resolution is the finality of arbitral awards.¹⁴³ In the arbitral context, finality means the tribunal's final decision and award are not subject to extensive judicial review or appeal. Court judgements and IDC decisions generally lack such finality because the parties are generally entitled to appeal the judgments or decisions to higher courts, unlike arbitral awards. The benefits of the limited appellate review for parties include expedited proceedings, timely determinations, reduction in costs, and increased confidence in the reliability of the outcome.¹⁴⁴

¹⁴² See 'Aiming for Consistency in Arbitration' (*LexisNexis*, 9 October 2013) <https://www.cov.com/files/Uploads/Documents/Aiming_for_Consistency_in_Arbitration.pdf> accessed 14 November 2019 (discussing how the IBA is seeking to create greater consistency among arbitration guidelines globally).

¹⁴³ This principle of finality is embodied in most institutional arbitration rules worldwide, including those of the International Chamber of Commerce, International Centre for the Settlement of Investment Disputes, London Court of International Arbitration, and the American Arbitration Association. See AM Saleem, *Finality of Awards: Is It the Key Feature of the New Saudi Arbitration Law that Will Put the Country in the Global Map of Arbitration?* (Unpublished PhD Dissertation, Glasgow University 2013) 1.

¹⁴⁴ *Ibid.*

As such, parties generally include arbitration clauses in international agreements because they know that arbitral awards would be enforceable in countries that have ratified conventions such as the New York Convention.¹⁴⁵

In addition to being final, arbitral awards are also easier to enforce against foreign parties than foreign court judgments or administrative decisions.¹⁴⁶ Given the number of foreign companies investing in the Saudi insurance market, there is a strong likelihood that awards granted by tribunals outside of the KSA may need to be enforced against a foreign parent company if the Saudi branch or subsidiary has insufficient domestic assets. The enforceability stems from the voluntary subjecting of the KSA to the New York Convention. The Convention provides for the recognition and enforcement of arbitral awards by all contracting states and narrowly limits the grounds on which a state can oppose the enforcement of an award.¹⁴⁷ As noted above, the KSA became a party to the Convention in 1994. The majority of developed nations, in which most multinational companies are headquartered, have also subscribed.¹⁴⁸

4.4 Conclusion

Litigation is inefficient and works in favour of the insurers because it is slow, laden with rules, costly, and unpredictable. IDC adjudication is not without flaws because the official guidelines are vague making the proceedings and outcome unpredictable. Also, compelling IDC adjudication cannot be justified if the available forms of ADR in the KSA provide consumers or policyholders with a better opportunity for challenging adverse coverage determinations by insurers.

Although negotiation is traditionally the preferred method for settling disputes, it has not been very successful because parties are often too partial and emotionally invested to make rational and objective decisions. Also, there is no requirement or even expectation of consistency in the way in which negotiation should be conducted. Thus, it is less appealing to a policyholder seeking to challenge an insurance company with stronger bargaining power.

All insurance-related disputes in the KSA are required to seek mediation before submitting a claim to the IDC's Primary Committee. However, it is shown in Chapter 5 that the vast majority

¹⁴⁵ See Moses (n 41) 211.

¹⁴⁶ Ibid.

¹⁴⁷ Roy (n 125) 924-928.

¹⁴⁸ 'Status: Convention on the Recognition and Enforcement of Arbitral Awards' (New York, 1958) (*UNCITRAL*, 2017) <http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html> accessed 14 November 2019. There are currently 157 contracting states to the Convention. *ibid*.

of disputes are not resolved through mediation. Also, the mediator is without authority to impose a settlement, and a party cannot ensure that the mediator would not be guided by personal opinions, values, and feelings.

Arbitration on the other hand is very appealing because of expedited proceedings, timely determinations, reduction in costs, and increased confidence in the reliability of the outcome. The parties exercise a significant degree of control over who arbitrates and how the arbitration will proceed. The Arbitration Regulation and Implementing Regulations empower parties to create a framework outside of the court system for the resolution of their disputes. This is no doubt an important advantage over other forms of ADR such as negotiation and mediation. However, the Arbitration Regulation and Implementing Regulations do not nearly provide the complete picture of what is to be expected. They are for example silent on the specific documents that should be submitted during disclosure. They are not clear on whether the proceedings may be deemed to have commenced where the party requesting arbitration does not fully comply with Article 9 of the Implementing Regulations. Emphasis is placed on the arbitrator's grasp of the *Shariah* for tribunals in the KSA creating a high risk that the parties may appoint an arbitrator who fulfils the conditions set out in Article 14 but is not technically competent. Also, arbitrators as private actors cannot determine the potential arbitration of statutory claims, and the Court of Appeal may *sua sponte* invalidate an arbitral award because it violates the principles of the *Shariah* as interpreted by the Court.

It follows that arbitration is very similar to the administrative tribunal model and does not confer any unique advantage. The parties to the arbitration are essentially provided the same protection as disputants in the IDC as regards fairness and privacy. The flexibility of the process is limited because of restrictions placed on the freedom of the parties to select procedural and substantive rules that do not conflict with the principles of the *Shariah*. However, arbitration has an advantage over the administrative tribunal model regarding timely determinations. Notwithstanding, where the arbitral award was issued in another country or in a language other than Arabic, the enforcing court in the KSA may require the agreement, transcript of the proceedings, and award to be translated accurately, as well as a written verification from the arbitral tribunal. These may then add layers of formality, time, and cost.

It may then be contended that where the underlying contract is not balanced, there is no option that consistently provides policyholders with a credible opportunity to compel insurers to pay

claims following unfair coverage determinations. However, it is uncertain whether in practice policyholders do not consistently and successfully challenge adverse determinations by insurance companies in the IDC. This is because the analysis in this Chapter has been doctrinal and theoretical, but models and theories do not provide completely accurate representations of reality.¹⁴⁹ Tribunals, like courts, are not limited in practice to the terms prescribed in the relevant statute or regulation.¹⁵⁰ They also rely on scientific reasoning and creative activity to bring the statutes and regulations into a logical whole. The next Chapter therefore conducts a practical inquiry to determine whether the shortcomings of the administrative model identified in Chapter 3 and above adversely affect the IDC's efficiency and effectiveness.

¹⁴⁹ See P Nilson, 'Making Sense of Implementation Theories, Models and Frameworks' (2015) 10 *Implementation Science* 53, 56.

¹⁵⁰ NM Korkunov, *General Theory of Law* (MG Hastings, Tr, 2nd edn, Macmillan 1922) 421-424.

Chapter 5: Determining the Effectiveness of the IDC on the Basis of a Practical Inquiry

5.1 Introduction

The adjudication of insurance coverage disputes has been delegated to administrative tribunals or specialised committees known as the Insurance Dispute Committee (IDC). Thus, despite the shortcomings identified in Chapters 3 and 4, the IDC remains the official dispute resolution forum for policyholder's claims in KSA. As mentioned in Chapter 1, this thesis seeks to determine whether the choice of dispute resolution option made by the Saudi legislator is justified. Following the doctrinal legal inquiry in the previous chapters, this Chapter adopts a practical reason approach. This approach emphasises decisional methodology: how parties perceive the process and outcome and how IDC adjudicators decide cases.¹ It follows from Bingham's contention that 'judicial generalizations are of questionable accuracy and utility.'² Thus, it shifts the emphasis from the doctrinal analysis of the rules governing the IDC to assessing the practical effects of the use of the IDC option. It stresses the importance of an objective and external observation of this dispute resolution option so as to determine whether, despite the shortcomings of the Cooperative Insurance Companies Control Law of 2003 (CICCL) and Working Rules, the IDC has practical and functional utility justifying the Saudi legislator's preference for this option.

The Chapter begins with a brief discussion of the main thrust of the practical inquiry. It explains how the findings of surveys conducted by the General Secretariat of the Committees for the Resolution of Insurance Disputes and Violations ('General Secretariat') and decisions of the IDC Committees are used to determine whether the IDC serves a predetermined purpose of efficiency. Satisfaction is used by the General Secretariat as the sole measure of efficiency and

¹ JM Feinman, 'Practical Legal Studies and Critical Legal Studies' (1988) 87 *Michigan Law Review* 724, 724, 728-731 (contrasting critical legal studies and practical legal studies).

² JW Bingham, 'What is the Law?' (1912) 11 *Michigan Law Review* 1, 9, 15-16 ('The lawyer, as does the scientist, studies sequences of external phenomena and he studies them with a similar purpose-to determine their causes and effects and to acquire an ability to forecast sequences of the same sort'). See also VA Wellman, 'Practical Reasoning and Judicial Justification: Toward an Adequate Theory' (1985) 57 *Colorado Law Review* 45, 46, 90-92 (discussing the use of case studies to support the contention that the practical application of theory is viable); DA Farber and PP Frickey, 'Practical Reason and the First Amendment' (1987) 34 *UCLA Law Review* 1615 (proposing the practical reason approach and criticising the assessment of the first amendment law based on abstract theories).

effectiveness.³ This is followed by an analysis of the eight-dimensional service quality instrument used by General Secretariat to ascertain the level of satisfaction of the parties who submit claims to the IDCs. In order to determine whether the drive for efficiency has not jeopardised the fairness and effectiveness of the system, some important decisions of Primary Committees and the Saudi Arabian Monetary Agency (SAMA) Appeal Committee are assessed. This also enables the researcher to ascertain whether the level of satisfaction of the users of the IDC may be correlated with the fairness of the decisions of the Committees. An attempt is also made to determine whether the level of satisfaction of the users of the IDC may be explained by the fact that the users believe the IDC is better than other dispute resolution options. It is shown that despite the shortcomings identified by the doctrinal legal inquiry in Chapters 3 and 4, the IDC is an effective dispute resolution option in practice. It is however noted that it is difficult to explain the disconnect between the results of the theoretical and doctrinal analyses in Chapters 3 and 4, and the results of the practical inquiry. This chapter seeks to answer the research questions about whether IDC adjudicators adopted any specific measures to protect consumers, and whether consumers are satisfied with the IDC.

5.2 The Main Thrust of the Practical Inquiry

In Chapter 3, it was noted that litigation is ineffective and works in favour of the insurer because it is slow, laden with rules, costly and unpredictable. One of the objectives of the CICCL was to enable the Saudi consumer to credibly threaten recourse to the IDC against insurers who wrongly cut payment claims. It follows that the administrative tribunal model on which the IDC is based ought to be more effective than the litigation model. In other words, the expenses, protracted nature and unpredictability of litigation ought to be avoided or reduced by channelling disputes into an administrative system. However, after a critical analysis of the rules governing the IDC, it was concluded that the IDC is not a better dispute resolution option than litigation; at least, from a theoretical perspective. The provision adopting the principle by

³ As noted in Chapter 1, satisfaction has been demonstrated to be a surrogate measure of effectiveness and a reliable arbiter of the success of public organisations. See H Hill et al, *Customer Satisfaction* (Cogent 2007) 18-28. See also AW Gatian, 'Is User Satisfaction a Valid Measure of System Effectiveness?' (1994) 26(3) *Information & Management* 119, 119-131. Satisfaction has been studied from different aspects with the focus largely on the expectations of users prior to the experience of using the services or products and the perception of the users after using the service or product. Thus, satisfaction as a measure determines how services or products meet the expectations of users. See RA Westbrook and RL Oliver, 'The Dimensionality of Consumption Emotion Patterns and Consumer Satisfaction' (1991) *Journal of Consumer Research* 84, 84-91. Also, satisfaction data are established indicators of perceptions, and it has been shown that satisfaction is highly correlated with effectiveness and efficiency. See E Hirons et al, 'External Customer Satisfaction as a Performance Measure of the Management of a Research and Development Department' (1998) 15(8/9) *Journal of Marketing* 21, 21-31; S Joo, 'How are Usability Elements – Efficiency, Effectiveness, and Satisfaction – Correlated with Each Other in the Context of Digital Libraries?' (2010) *ASIST* 1, 1-2.

which IDC Committees are bound to precedents is ill-defined; the Working Rules of the CICCL do not distinguish between binding, mandatory and persuasive authority; and the Rules are ambiguous regarding the basic elements that all Committee decisions should contain, how decisions should be enforced, and the grounds for objection and appeal. These uncertainties make the administration of justice by the IDC less predictable and promote arbitrariness. Cook warned that for ‘laws to be made meaningful, it is necessary that they have that specificity necessary for prediction, either by those to whom they apply, or by administrators who are to implement them.’⁴ Hence, the doctrinal analysis revealed that the CICCL does not give the IDC that specificity necessary for prediction.

In Chapter 4, an attempt was made to determine whether some key ADR options (negotiation, mediation and arbitration) may be preferable to the administrative tribunal model (IDC), given the flexibility provided by these forms of ADR over the choice of forum, and substantive and procedural law. However, it was shown that there is no requirement or even expectation of consistency in the way in which negotiation should be conducted. Also, although all parties to insurance-related disputes in the KSA are required to seek mediation before submitting a claim to the IDC, the mediator is without authority to impose a settlement and parties cannot ensure that the mediator would not be guided by personal opinions, values and feelings. With regard to arbitration, it is shown to be very appealing because of expedited proceedings, timely determinations, reduction in costs, and increased confidence in the reliability of the outcome. However, the Arbitration Regulation and Implementing Regulations do not adequately address the risk that the parties may appoint an arbitrator who is not technically competent or does not have a good grasp of the *Shariah* as it is applied in the KSA. Nonetheless, it is concluded that arbitration is better than the administrative tribunal model (IDC). The parties to the arbitration are provided the same protection as disputants in the IDC as regards fairness and privacy, but parties to arbitration are likely to achieve a more expedient resolution and benefit from cost savings. Also, arbitral awards that comply with the *Shariah* are more likely to be final. Lastly, parties that are familiar with arbitration in a country that has ratified the New York Convention and adopted the UNCITRAL Model Law will be generally prepared to engage in arbitration in the KSA because of the similarities between their arbitration regimes.

The doctrinal analysis therefore revealed that the IDC has important flaws, and arbitration may be the best option for the Saudi consumer seeking to take action against the insurer that has

⁴ T Cook, ‘Law, Arbitrariness and Ethics’ (1942) 30(2) *California Law Review* 151, 168.

wrongly cut a payment claim. However, the statement by Cook cited above is to the effect that laws are made meaningful when they have that specificity necessary for prediction, either by those to whom they apply or by administrators who are to implement them. Those to whom the CICCL applies in this context are Saudi consumers, while administrators who implement the CICCL are IDC Committee members or adjudicators. It may therefore be important to determine whether the CICCL and its Working Rules have that specificity necessary for prediction by Saudi consumers and IDC adjudicators. This is because what obtains in practice may be different from the conclusions of the doctrinal analyses conducted in chapters 3 and 4. This chapter therefore conducts a practical inquiry with the objective of determining whether Saudi consumers are satisfied⁵ with the way the CICCL and its Working Rules are applied by the IDC to resolve their claims against insurers.

It must be noted that indemnity should normally occur when a consumer or policyholder suffers a particular damage or loss as the result of the occurrence of an insured event, and the insurer becomes obligated to financially compensate the policyholder for that loss.⁶ Generally speaking, the indemnity payment under an insurance contract must be paid if the insured event occurs within the contract term and a timely claim is made by the policyholder.⁷ Under Article 44 of the Implementing Regulations for the CICCL, ‘the settlement period for the covered individuals’ claims shall not exceed fifteen days from the receipt of the claim accompanied by the documents.’ This period of time is intended to enable the policyholder to obtain the indemnity as soon as possible, which indicates that it is not permissible to extend this period arbitrarily.

As noted in the previous chapters, the insurance company may arbitrarily interpret the terms of the insurance contract in a manner that is contrary to the interests of the policyholder. In Appeal No. 3/AS/695 of 1431H, the insurer interpreted the contract as imposing an obligation on the policyholder to pay a sum of money above the cash value of the policy. The policy allowed the policyholder to borrow against the cash value of the policy before it was surrendered or sold. However, the insurer argued that the policyholder had to pay a sum of money above the money

⁵ As noted above, satisfaction is used by the General Secretariat as a measure of the effectiveness of the IDC. Hence, it is assumed that the effectiveness of the IDC is highly correlated with the satisfaction of the users of this administrative tribunal.

⁶ RA Al Saud, *Principles of Insurance* (Arab House 2000) 355; EC Kulakowski and LU Chronister, *Research Administration and Management* (Jones and Bartlett 2006) 373.

⁷ W Courtney, *Contractual Indemnities* (Hart Publishing 2014) 276; N Andrews, *Arbitration and Contract Law: Common Law Perspectives* (Springer 2016) 222.

that the latter had paid as premiums because the insurer contended that premium costs were lower where the premiums paid by policyholders were invested and enabled the insurer to earn from the investments. Thus, where the policyholder takes money out of the policy, the insurer earned less from the investment of the policyholder's premiums. However, the Board of Grievances held that the insurer could not arbitrarily interpret the contract to require the policyholder to pay a sum of money above the cash value. Moreover, the Board noted that the additional payment amounted to *riba* which is impermissible under the *Shariah*. Thus, if the insurer's interpretation was upheld, the contract would be void because it contained *riba*.

What is important to note here is that the policyholder may be denied coverage in an arbitrary manner and it may be difficult for the latter to successfully challenge the adverse coverage determination, where the insurer's interpretation of the contract does not undermine the *Shariah*. It is shown in section 5.4.1 below that in the KSA the insurer's determination may be arbitrary because of exclusions in the policy that render the insurer's liability illusory or the insurer's interpretation of ambiguous policy provisions that negate the reasonable expectations of the policyholder. As shown in Chapter 3, these problems related to insurance coverage are not unique to policyholders in the KSA. Nonetheless, the laws of the KSA do not clearly identify an avenue in which policyholders may successfully challenge insurers' arbitrary adverse determinations in a consistent manner. Without attention to power asymmetries, there is the risk that in the event of loss or damage, policyholders with fewer resources and in urgent need of compensation will be unable to compel insurance companies to indemnify them. In other words, the insurance company will not be denied an unconscionable advantage in the policy provisions.

In the KSA, prior to the enactment of the CICCL, insurance companies could be challenged in court (litigation) or via means outside of the courtroom such as the alternative dispute resolution (ADR) options, including negotiation, mediation and arbitration. Given the shortcomings of these options, the CICCL and its Implementing Regulations provide for the creation of a domestic dispute resolution forum that is deemed to be a cheaper and more efficient alternative regarding disputes involving policyholders. This domestic forum is an administrative tribunal called the IDC. Chapters 3 and 4 conduct a doctrinal analysis of the sources of law that guide and constrain Saudi judges, mediators, arbitrators and the IDC. The line of progress for these different options available to policyholders is charted. It is then shown that litigation is slow, costly and unpredictable and works in favour of the insurer. Also, it is

noted in Chapter 2 that conventional insurance contracts are seldom recognised and enforced by *Shariah* courts because they are based on uncertainty (*gharar*), which is prohibited by the *Shariah*. In Appeal No. 1228/AS/6 of 1431H, the Board of Grievances held that conventional insurance contracts are void under the *Shariah* because they enable the insurer to take money from policyholders for free. This is in cases where the policyholder pays premiums for defined period of time, but nothing happens to the insured property. The Board also held that conventional insurance contracts based on speculation regarding the occurrence of the insured event are contrary to the *Shariah* which forbids *gharar* or uncertainty and risk. Also, in Appeal No. S/2/2713 of 1435H, the Board of Grievances refused to enforce a conventional insurance contract on the grounds that it contains *gharar* and *riba*.

The hard line taken by the Board of Grievances was particularly problematic with sale contracts that included an insurance agreement or policy to cover an eventual loss or damage of the subject matter. Thus, many parties who have entered into insurance contracts were unable to seek redress from courts in the KSA. An article published by the Middle East paper in 2006 noted that there was a backlog of more than 10,000 insurance-related cases in the Board of Grievances of the East region of the KSA because of the Board's intransigent posture towards conventional insurance contracts.⁸ Then, in Appeal No. Q/7138 of 1432H, the Board of Grievances refused to hear an insurance coverage dispute on the grounds of subject matter jurisdiction. The Board noted that such disputes should be settled by the IDC which had the requisite authority.

However, in Chapter 3, it is argued that the expenses and unpredictability of litigation cannot be avoided or reduced by channelling insurance-related disputes into the current administrative system, the IDC. This is because of the lack of clarity in IDC procedures, and ambiguities within the empowering legislation. As noted above, unlike the previous chapters, the inquiry conducted in this chapter is practical. The emphasis is on what IDCs do in practice⁹ and the level of satisfaction of the users who are consumers or policyholders. Kvelson contrasts the

⁸ See <<http://archive.aawsat.com/details.asp?issueno=9896&article=341849#.XKdKn6SEaEc>>, accessed on 14 November 2019.

⁹ For a concise definition of practical inquiry, see JD Wallace, 'Practical Inquiry' (1969) 78(4) *The Philosophical Review* 435, 435-436.

systems of inquiry proposed by Bentham¹⁰ and Pierce¹¹ and shows that the latter emphasised the dynamic development of the whole justice system because it does not only rely on the logic of justification in the traditional doctrinal sense but also on discovery and inquiry that account for procedures in practical life.¹² Thus, practical inquiry aligns with the attempt by legal realism to eliminate any contradiction between legal theory and legal praxis.¹³ It follows that the legal researcher should be engaged with the law on the level of ideas, development in thought, and practical legal procedure. Kevelson therefore concluded that ‘What is needed ... is not a doctrine, but a method such that the consequences of discovery and inquiry in thought may be understood as representations of actual phenomenal processes in the world of experience.’¹⁴

This chapter examines the workings of the IDC on the ground with the objective of instructing adjudicators within the Committees, as well as Saudi policymakers and legislators in their consideration of the problems confronted by policyholders and guide them in the more efficient and effective resolution of insurance coverage disputes. Given the shortcomings of the statutes (discussed in chapters 3 and 4), this chapter seeks to determine whether in practice IDC adjudicators have devised strategies of providing better protection to policyholders confronted with problems such as illusory coverage and unconscionable advantages in policy provisions. This chapter therefore assesses the practical application of insurance law and their interplay with the theoretical analyses conducted in chapters 3 and 4. The assessment is based on the following advice given by Woodhouse:

The disease of disjunction between legal education and the profession is not caused by too much theory or too little doctrine and practice, but by too little attention to their essential interplay in a complex and interconnected world. The cure I prescribe is not further polarization but a more thoughtful integration not only of theory, doctrine, and

¹⁰ For an analysis of Bentham’s system of inquiry, see J Bentham, *An Introduction to the Principles of Morals and Legislation* (Hafner Publishing 1948) 334.

¹¹ For an analysis of Pierce’s system of inquiry, see R Kevelson, *Charles S. Pierce’s Method of Methods* (John Benjamin’s Publishing 1986) 45-56; R Kevelson, ‘Pierce’s Dialogism and Continuous Predicate’ (1982) 18 *Transactions of the Charles S. Pierce Society* 110.

¹² R Kevelson, ‘Semiotics and Methods of Legal Inquiry: Interpretation and Discovery in Law from the Perspective of Pierce’s Speculative Rhetoric’ (1986) 61(3) *Indiana Law Journal* 355, 356.

¹³ Ibid. Realist empirical studies have been criticized for producing knowledge and developing ideas without practical application or any concrete benefit to lawyers and judges. See K Llewellyn, ‘On What Makes Legal Research Worth While’ (1956) 8 *Journal of Legal Education* 399, 401 (noted that ‘the Hopkins ebullition and its partial counterparts at Yale had a single notable effect. For twenty-five years, they pretty thoroughly choked off foundation interest in such research in law as quested beyond doctrine’). See also W Twining, *Karl Llewellyn and the Realist Movement* (2nd edn, Cambridge University Press 2012) 388-443.

¹⁴ Kevelson (n12) 359.

practice in the classroom, but of the complementary roles of scholar, teacher, and lawyer in ourselves and in our understanding of each other.¹⁵

An attempt is made here to assess the interplay between the CICCL and Working Rules and the working of the IDCs in practice in the complex Saudi system. It seeks to ascertain whether consumers who have submitted claims to the IDC are satisfied with their experience and why. This may entail determining what standards are used by the Committees to determine whether a contract provides actual or illusory coverage and when the policyholder should reasonably expect to be indemnified. The researcher believes that this will provide a more thoughtful integration of the theories and doctrines analysed in the previous chapters and the working of the IDCs in practice.

The inquiry is divided into three parts. The first part focuses on the level of satisfaction of parties who appear before the IDCs. It analyses data collected by the General Secretariat. The second part focuses on decisions rendered by the Primary Committees and SAMA Appeal Committee within the IDC structure, and the third part examines decisions of the Board of Grievances. The objective of the second and third parts is to explain the level of satisfaction ascertained in the first part.

5.3 Statistics on the Use of the IDC

The statistics presented and analysed in this section were published by the General Secretariat.¹⁶ Since 2012, the General Secretariat has in accordance with the Council of Ministers Resolution No. 190 of 9/5/1435H¹⁷ and the Council of Ministers' Resolution No. 215 of 29/06/1430H collected and analysed data in large quantities with the objective of ascertaining the number of disputes filed with the three IDC Primary Committees and the SAMA Appeal Committee.¹⁸ The General Secretariat assesses the process and duration of

¹⁵ BB Woodhouse, 'Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life' (1993) 91 *Michigan Law Review* 1977, 1997.

¹⁶ They are contained in three documents: General Secretariat, 10th Annual Report (SAMA 2014) 4-5 < <http://www.idc.gov.sa/en-us/Downloads/The%20Annual%20Report%20for%202014.pdf>> accessed 14 November 2019 ('2014 Annual Report'); General Secretariat, 11th Annual Report (SAMA 2015) < <http://www.idc.gov.sa/en-us/Downloads/The%20Annual%20Report%20for%202015.pdf>> accessed 14 November 2019 ('2015 Annual Report'); General Secretariat, 12th Annual Report (SAMA 2016) < <http://www.idc.gov.sa/en-us/Downloads/The%20Annual%20Report%20for%202016.pdf>> accessed 14 November 2019 ('2016 Annual Report').

¹⁷ This should not be confused with the Council of Ministers Resolution No 190 of 19 June 1989 that sets out the procedural rules of the Board of Grievances.

¹⁸ Article 13 of Resolution No. 190 provides that General Secretariat shall classify and publish the decisions of the Committees and prepare annual statistics on the decisions. It does not specify what motivated the Saudi legislator to require the publication of the decisions of the Committees. However, it may be assumed that the

dispute resolution via these Committees and compares the efficiency of the process to that of another dispute resolution mechanism, namely mediation. This is because parties are required to seek mediation with the General Secretariat before submitting complaints to the relevant Primary Committee. The annual reports by the General Secretariat also include results of user satisfaction surveys conducted with the objective of understanding the views and experiences of the users.

Tables I summarises the General Secretariat's annual reports with regard to the total number of disputes filed with the three Primary Committees.

Table I: Total Number of Cases Received by IDC Primary Committees

Year	Motor Insurance	Health Insurance	Other	Total Number of Cases
2014	880 (89.52%)	75 (7.63%)	27 (2.85%)	982
2015	1774 (88.67%)	123 (6.93%)	88 (4.4%)	1985
2016	1473 (88.09%)	119 (7.12%)	80 (4.79%)	1672

Source: General Secretariat

Table I shows that policies covering theft or damage to vehicles and policies covering the risk of incurring medical expenses account for most of the coverage disputes resolved by the IDCs between 2014 and 2016. Also, the total number of cases received by the three Primary Committees increased sharply between 2014 and 2015 but then dropped in 2016. Nonetheless, between 2014 and 2016, the total number of cases increased by more than 45 per cent. The General Secretariat also revealed that the number of persons visiting their office to make inquiries increased by 5 per cent between 2015 and 2016, while case registration requests increased by about 93 per cent within the same period.¹⁹

The General Secretariat does not explain the increase. However, it may be contended that this may be explained by increased awareness of the services provided by the IDC and also the satisfaction of the users. The General Secretariat previously noted that the primary objective of

objective is to enhance transparency, accountability and efficiency of the IDC since the publication increases access to information about the dispute resolution process and also enhances the predictability of the system.

¹⁹ 2016 Annual Report, 22.

the IDC is ‘to achieve justice and raise awareness of rights and insurance through the publication of decisions issued by the Committees and the Appeal Committee.’²⁰ The choice to publish decisions of the Committees was made in accordance with Article 1 of the Council of Ministers Resolution No. 215 and Article 13 of the Rules and Procedures of the Committees for Resolution of Insurance Disputes and Violations.²¹ The publication of decisions puts all parties and members of the public on notice of the Committees’ decisions in specific matters, including how the Committees viewed the facts, assessed the disputants’ arguments, and interpreted and applied the law. It is shown in Table IV below that user satisfaction increased between 2014 and 2016. Thus, the enhanced perception of fairness of the procedures and outcomes may be linked to the increase in the number of inquiries and complaints submitted.²² It must be noted that the Secretariat has qualified and experienced conciliators who work independently. They examine claims and advise the claimants on appropriate settlements. Thus, they assist the parties via mediation before they can proceed to the Committee. It may also be contended that the confidence of Saudi policyholders and insurers may explain the high number of inquiries and claims submitted.

Table I also shows that motor insurance (compulsory and comprehensive) account for a majority of cases filed against insurance companies in the IDCs. Health or medical insurance accounted for only 6 and 7 per cent of the total number of cases. Hence, the IDCs mostly deal with policyholders seeking to enforce policies that cover goods purchased for personal use. Although the General Secretariat does not provide statistics on private and commercial vehicles, it may be because the IDC is only deal with small claims. The results of the surveys shown in Table IV below therefore indicate that consumers are generally satisfied with their experience with the IDCs. Table II summarises the General Secretariat’s annual reports with regard to the total number of appeals received by the SAMA Appeal Committee.

²⁰ General Secretariat, ‘Vision and Methodology’ (IDC 2017) <<http://www.idc.gov.sa/en-us/CommitteesDecisions/Pages/VisionandMethodology.aspx>> accessed 14 November 2019.

²¹ See also Article 14(3) of the Council of Ministers Resolution No 190 dated 09/05/1435H.

²² Many studies have established direct causal relationships between customer satisfaction, service quality and customer loyalty in different industries. See for example MH Siddiqui and TH Sharma, ‘Analysing Customer Satisfaction with Service Quality in Life Insurance Services’ (2010) 18(3-4) *Journal of Targeting, Measurement and Analysis for Marketing* 221, 235-238; K Liao, ‘The Causal Effects of Service Quality, Brand Image, Customer Satisfaction on Customer Loyalty in the Leisure Resort Enterprise’ (2012) 11(5) *China-USA Business Review* 631, 637-639; RA Spreng and RD Mackoy, ‘An Empirical Examination of a Model of Perceived Service Quality and Satisfaction’ (1996) 72(2) *Journal of Retailing* 201, 208-2012; JB Gotlieb et al, ‘Customer Satisfaction and Perceived Quality: Complementary or Divergent Constructs?’ (1994) 76(6) *Journal of Applied Psychology* 875, 875-885; JJ Cronin and SA Taylor, ‘Measuring Service Quality: A Re-examination and Extension’ (1992) 56(7) *Journal of Marketing* 55, 56-67.

Table II: Total Number of Cases Received by SAMA Appeal Committee

Year	SAMA Appeal Committee Rulings	Appeal Requests
2014	/	/
2015	532	140
2016	281	330

Source: General Secretariat

The General Secretariat does not provide statistics on the number of appeal requests made in 2014, as well as the number of decisions issued by the SAMA Appeal Committee. However, it notes that between 2012 and 2014, the Committee received 1210 appeals.²³ In 2015, the Appeal Committee made 532 rulings, which may be explained by the backlog from previous years. But, the number of appeal requests made in 2016 was more than twice the number made in 2015. This sharp increase in the number of appeal requests may be explained by the fact more parties were not satisfied with the decisions in 2016 than in 2015. Also, given that people are increasingly aware of the services provided by the IDCs, they equally become aware that the Appeal Committee's decision, not that of the Primary Committee, will be the final word in the case.

Research has shown that appellate review is important because it helps to protect the fairness of the system and ensure accuracy through the assessment of the rationale behind the decisions of trial judges.²⁴ This is what motivates parties who are not satisfied with judges' decisions to apply to a higher court for the reversal of the decisions. Meador and Bernstein noted that appeal is another opportunity to be heard: '[n]othing else affords the same assurance that the judges in fact have been confronted with the theories and arguments of the parties and have put their minds to the case.'²⁵ As such, the increase in the number of appeal requests may be held to be evidence that the SAMA Appeal Committee provides the assurance to policyholders that the Primary Committees have been confronted with theories and arguments of the disputants. Nevertheless, only a small percentage of Primary Committee decisions are appealed. In 2015,

²³ 2014 Annual Report, 25.

²⁴ See JC Dobbins, 'New Evidence on Appeal' (2012) 96 *Minnesota Law Review* 2016, 2016-2018; BJ Gorod, 'The Adversarial Myth: Appellate Court Extra-Record Factfinding' (2011) 61 *Duke Law Journal* 1, 3-5.

²⁵ DJ Meador and JS Bernstein, *Appellate Courts in the United States* (West Publishing 1994) 82-84.

there were 2001 decisions but only 140 appeal requests. Also, in 2016, there were 1672 decisions but only 330 appeal requests.

As noted above, the General Secretariat also conducted surveys in order to ascertain the level of satisfaction of two main users of the IDC, namely claimants and defendants. A customer of the IDC may be involved in a dispute as a claimant (the person or undertaking who submitted the complaint) or as a defendant (the undertaking or person against whom the complaint was submitted). IDC cases predominantly relate to claims for indemnification. Many of the disputes are about adverse coverage determinations made by insurance companies that appear as defendants.

However, the General Secretariat's data does not include demographic details. Thus, a profile of respondents cannot be developed on the basis of their answers.²⁶ This is most likely because the General Secretariat did not find that demographic variables are determinative of the respondents' experience. Hence, the survey focused mainly on the respondent's role in the process, whether a claimant or defendant.

Table III: The Status of Respondents

Year	Claimants (%)	Respondents (%)
2014	53	47
2015	56.07	43.03
2016	60.3	39.7

Source: General Secretariat

Table III shows that the majority of respondents were claimants. Given that the claimants were mostly policyholders with small claims, their answers are relevant to this study because they show that most policyholders who submitted claims to the IDCs are satisfied with this option of challenging the adverse coverage determinations of insurance companies. The status of the respondents is also important because it is determinative of the IDC's efficiency and effectiveness. Where a majority of claimants have positive views and experiences, it may be contended that the IDCs are productive and easily operative or afford good service to the

²⁶ For an explanation of a feasible method of carrying out a robust survey of civil court claimants and defendants, see Ministry of Justice UK, 'A Survey of Civil Court Users: A Feasibility Study' (2015) *Analytical Summary* <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/449575/civil-court-users-survey.pdf>, accessed 14 November 2019.

highest number of policyholders. Hence, the General Secretariat sought to determine whether IDCs are increasingly used by persons who are satisfied with their experience.

Nonetheless, no distinction was made between the perspectives of claimants who are policyholders and claimants who are insurance companies. Thus, in each case, it is uncertain whether the satisfaction of claimants who are policyholders is linked with the same variables as the satisfaction of claimants who are insurance companies.

Also, the General Secretariat's surveys do not include an assessment of the users' satisfaction with the outcomes of the dispute resolution process in the Primary Committees. It may only be contended that the rate of appeal of the decisions of the Primary Committees is a strong indicator of the users' satisfaction with the decisions. The General Secretariat used the same methodology and design for the surveys conducted in 2014, 2015 and 2016. This allowed for a meaningful comparison of the findings of the three surveys.

5.3.1 User Satisfaction

In order to improve the level of services provided by the IDCs, each year the Internal Audit Unit of the General Secretariat conducts a survey that measures the quality of services from case registration to the issuance of a ruling.²⁷ The data was collected using emails, and questionnaires that were distributed to parties after the Committees' rulings. Telephone interviews were also used. As shown in Table III above, in 2014, there were 636 respondents; 340 or 53 per cent of the respondents were claimants and 296 or 47 per cent of the respondents were defendants. In 2015, there were 946 responders; 563 or 56.7 per cent of the respondents were claimants and 410 or 43.3 per cent of the respondents were defendants. In 2016, there were 1037 respondents; 784 or 60.3 per cent of the respondents were claimants and 523 or 39.7 percent of the respondents were defendants. It follows that the General Secretariat was able to survey 2619 parties to insurance coverage disputes. This is a good-sized sample for the purposes of identifying significant differences and associations that are present in the target population. Although the annual reports do not discuss the methodology used to assess the representativeness of this sample,²⁸ it may be contended that the analysis of information obtained from the sample may allow statistical inference to be made about the larger group of

²⁷ 2016 Annual Report, 8.

²⁸ For ways of assessing sample representativeness, see A Omair, 'Sample Size Estimation and Sampling Techniques for Selecting a Representative Sample' (2014) 2(4) *Journal of Health Specialities* 142, 142-147; S Bertino, 'A Measure of Representativeness of a Sample for Inferential Purposes' (2006) 74(2) *International Statistical Review* 149, 149-159; CA Ramsey and AD Hewitt, 'A Methodology for Assessing Sample Representativeness' (2005) 6 *Environmental Forensics* 71, 72-73.

all parties who have submitted claims to IDCs. This is because consecutive sampling was used by the General Secretariat, whereby all potential respondents available were selected, and information was collected without regard to the respondents' knowledge and quality of their responses.²⁹

The General Secretariat used an eight-dimensional service quality instrument together with a structural equation modelling to determine the effects of the service on the satisfaction of the parties who submit claims to the IDCs. For each question, there were five options ranging from 'excellent' to 'poor'. Excellent means satisfaction with the relevant service, process or outcome, and poor means dissatisfaction. Tables IV and V below summarise the survey findings in 2014, 2015 and 2016 in regard to the eight dimensions. It focuses only on the 'excellent' and 'poor' responses in order to determine the number of respondents who indicated that they were satisfied. Those who indicated 'very good', 'good' and 'fair' may have been satisfied, but they are not included in this analysis because the focus is only those who were entirely satisfied with the service, process or outcome.

Table IV: Percentage of Respondents Who Said They Had an Excellent Experience

Dimension	2014	2015	2016
Registration of the compliant	73%	77.9%	81%
Staff conduct	83%	85.5%	86%
Responses to case-related inquiries	67%	71.1%	74%
Procedures for communicating hearing dates	70%	74.3%	75.5%
How hearings were conducted	65%	67.7%	70%
Time taken to resolve the case	48%	49.8%	53%

²⁹ For an analysis of consecutive sampling, see E Dumholdt, *Rehabilitation Research: Principles and Application* (Elsevier Saunders 2005) 112-113.

Compliance with timeframe for delivering ruling	59%	63.8%	68%
E-services provided by the Secretariat	56%	62.2%	66.5%

Source: General Secretariat

Table V: Percentage of Respondents Who Said They Had a Poor Experience

Dimension	2014	2015	2016
Registration of the compliant	3%	2.5%	2%
Staff conduct	1%	0.08%	0.7%
Responses to case-related inquiries	3%	3%	2.5%
Procedures for communicating hearing dates	2%	1.7%	1.5%
How hearings were conducted	7%	5.8%	5%
Time taken to resolve the case	17%	14.8%	13%
Compliance with timeframe for delivering ruling	8%	6.3%	5.5%
E-services provided by the Secretariat	17%	15%	12%

Source: General Secretariat

Tables IV and V show the percentage of parties who said they had an excellent experience and the percentage of parties who said they had a poor experience. Thus, parties who submitted claims to IDCs between 2014 and 2016 generally had an excellent experience regarding the registration of the claims, the conduct of the Committee personnel (including the clerks and

adjudicators), the responses to parties' inquiries, the conduct of the hearing, compliance with the scheduling requirements, and the quality of electronic services provided by the General Secretariat. As shown in Table III, the majority of the respondents were claimants. Also, the majority of claimants were policyholders who submitted small claims. As such, it may be contended that the majority of policyholders with small claims who have challenged adverse determinations by insurance companies in IDCs have been satisfied with their experience.

The only concern shared by most of the respondents is the time taken by the Committees to resolve the disputes. Table IV shows that in 2014 and 2015, less than half of the respondents were happy with the duration of the proceedings. Thus, the CICCL and Working Rules did not speed up the process of dispute resolution, making way for rapid verdicts. It is noted in Chapter 3 that when the timeline for a case is lengthy, the accumulation of fees along the way may be significant. It was also noted that this is often exacerbated by the procedural formalities required when pursuing a case in the ordinary courts. However, administrative tribunals are more flexible and informal. Also, the fact that a party may pursue a claim before the Primary Committee without counsel implies that parties are more likely to save time and money by submitting disputes to the IDC. The data collected by the General Secretariat supports this argument. The lengthy timeline for cases dealt by the IDCs is not exacerbated by procedural formalities. Hence, a majority of the respondents were happy with the way the hearings were conducted, as well as with the Committees' compliance with the timeframe for rendering verdicts.

5.4 Why Are the Users Satisfied with the IDC?

Table II shows that in 2016 there were 330 appeal requests made to the SAMA Appellate Committee. Hence, out of 1672 disputes resolved by the Primary Committees, only 330 appeal requests were made. It may therefore be contended that the IDC is efficient in practice. This is because it is productive and easily operable³⁰ and affords good service to the highest number of disputants.³¹ It also supports the finding on the satisfaction of the users shown in Table III, viz., 70 per cent of the parties surveyed stated that the conduct of the hearings in the Primary Committees was excellent. The rate of appeals to the SAMA Appellate Court is therefore only 19 per cent of the total number of disputes resolved by the Primary Committees. The researcher

³⁰ See CE Clark, 'Making Courts Efficient' (1961) 8 *UCLA Law Review* 489, 489 (describes the efficiency of a court system in terms of productiveness and operability).

³¹ See H Harley, 'An Efficient County Court System' (1917) 73 *Justice Through Simplified Legal Procedure* 189, 189 (describes efficiency as the provision of service to the highest number of litigants).

was unable to find any statistics on the rate of appeals from *Shariah* courts (or appeals received by the Board of Grievances), as well as data about the mass of cases from trial stage through the appellate stage. Nevertheless, the rate of appeal of 19 per cent in tried cases is relatively low when compared to other jurisdictions.³²

Despite the high level of user satisfaction, the General Secretariat's surveys identified areas of service delivery and performance that require improvement. These include better management of expectations of the duration of the proceedings and the ascertainment of differential response rates among claimants and defendants and individuals and undertakings in relation to their route into the IDC. The absence of such data may be the reason why no explanation is provided for the reduction in satisfaction levels between 2014 and 2015, and slight increase in 2016.

In Chapter 3, the Working Rules governing the IDC were analysed and it was noted that there is no conclusive evidence that the IDC is a better dispute resolution option than litigation when the laws governing the IDC are analysed. This is because it is uncertain whether the persons serving on the Primary Committee possess the necessary independence to perform essentially judicial functions. In some instances, the members may have previously served as administrators within SAMA. Thus, despite the Primary Committee's independence, its members may be more susceptible to political interference and might not maintain the same respect for an independent outlook as ordinary judges.

It was also noted that IDCs are not subject to the same set of uniform procedures as the ordinary courts, which could potentially lead to arbitrary and inconsistent decisions from the Primary Committees and Appeal Committee. The Working Rules and the Law of Procedure provide little guidance to the Committees on the content that is required for their rulings. It follows that the Primary Committees are not compelled to rely on precedent or provide reasons or a rationale for their decisions.³³ This makes it difficult for a party to challenge the decision of the Primary Committee on appeal, insofar as such an appeal is permissible.

³² Eisenberg for example revealed that between 1988 and 2000, the appeal rate in tried cases in district courts in the United States was 39.6 per cent, and 40.96 per cent in tried cases with definitive judgements. See T Eisenberg, 'Appeal Rates and Outcomes in Tried and Non-tried Cases: Further Exploration of Anti-Plaintiff Appellate Outcomes' (2004) 1(3) *Journal of Empirical Legal Studies* 659, 686-687.

³³ Article 9 of the Working Rules, the Committee is instructed to decide cases 'in accordance with the laws and regulations regulating the nature of the dispute, the applicable rules and rulings reached at by the judiciary and the comparative jurisprudence for settling insurance disputes and violations.'

Despite these shortcomings, the data collected by the General Secretariat reveal that the total number of cases received by the three Primary Committees increased by more than 45 per cent between 2014 and 2016. Also, a vast majority of the persons surveyed by the General Secretariat are happy with the experience as shown in Tables IV and V above. Most of the respondents indicated that they had an excellent experience regarding the registration of their claims, the conduct of the Committee personnel (including the clerks and adjudicators), the responses to their inquiries, the conduct of the hearing, compliance with the scheduling requirements, and the quality of electronic services provided by the General Secretariat. It follows that the shortcomings of the IDC identified by the doctrinal analysis conducted in Chapters 3 and 4 do not adversely affect this administrative tribunal in practice. This demonstrates the importance of a practical inquiry that reconciles the legal theory and legal praxis.

Also, given that the General Secretariat did not collect qualitative data on the specific views of the respondents, it is difficult to explain in detail why a majority of the respondents indicated that their experience was excellent. It is uncertain whether they for example satisfied with the experience because they were able to save the money which they would have spent on court costs, expert and counsel fees or because they believed the procedure or outcome was fair. As shown above, the eight-dimensional service quality instrument used by the General Secretariat demonstrates that the IDC has been efficient. But, the drive for efficiency may have been detrimental to the fairness and effectiveness of the system.³⁴ The next section therefore examines the advantages to the users in order to determine the benefits that accrue in the IDC. The criteria used in Chapter 4 to assess arbitration are also used in this section. These include privacy, flexibility, duration and cost, neutrality, finality and enforceability and predictability.

5.4.1 Determining the Effectiveness of the IDC

5.4.1.1 Cost and Duration

The ability to achieve an expedited resolution is one of the main attractions of a dispute resolution option in insurance law. This is because in most cases, policyholders have suffered loss and desperately need money to replace the damaged property or item. This is especially the case where the property or item is a necessity. However, the IDC rules do not provide any

³⁴ See J Easton, 'Where to Draw the Line? Is Efficiency Encroaching on a Fair Justice System?' (2018) 29(2) *The Political Quarterly* 246, 246-253 (arguing that the drive for efficiency jeopardises the fundamental principles of justice and undermine the role of an independent judiciary in making decisions that are fair).

guidance on a timeframe within which a case must be concluded, leaving the parties with significant uncertainty as to how long their case will continue. The statistics published by the General Secretariat (Table IV) reveal that in 2014 and 2015, less than 50% of the users were very satisfied with the time taken to resolve their cases. In 2016, only 53% were satisfied. This is the lowest percentage of all eight categories. Also, the percentages of those who expressed dissatisfaction with the time taken to resolve their cases were highest in Table V.

It must however be noted that although the IDC does not resolve disputes as quickly as arbitration, it is much faster when compared to litigation. A study on the duration of litigation involving physicians in the KSA revealed that seventy per cent of cases lasted for two years or more.³⁵ Another study revealed that eighty per cent of litigations in the KSA lasted for more than two years.³⁶ On the other hand, the General Secretariat noted that a case brought for resolution before the IDCs can take up to six months at the initial stage and another six months or longer if appealed.³⁷ Thus, the users of the IDC are more likely to compare the Committees to the *Shariah* courts, which explains why 53% of the users in 2016 stated that they were satisfied with the time taken to resolve their cases. Also, Table IV shows that between 2014 and 2016, more than 59% of the users were satisfied with the Committees' compliance with the timeframe for delivering rulings.

5.4.1.2 *Shariah* Compliance

The Primary Committees do not refuse to hear claims because they are based on conventional insurance contracts which are generally not *Shariah*-compliant. Thus, the Committees recognise and enforce conventional insurance contracts that potentially violate the *Shariah*, rather than only cooperative insurance (*takaful*) contracts. However, the Committees cannot overlook the *Shariah* given that the Constitution of the KSA is the Holy Quran.

5.4.1.3 Impartiality

As noted in Chapter 4, the impartiality of the adjudicator ensures that the final decision is not tainted by bias. There are no neutrality or impartiality provisions in the CICCL and Working Rules requiring the parties to select the members of the Committee to adjudicate their

³⁵ SA Alkindy, 'Expatriate Doctors, Medical Litigations and Overall Patient Care: Taif Study' (2016) 4 *Saudi Surgery Journal* 104, 104-107.

³⁶ E Habib, 'Obstetricians' Perception of Medico-Legal Problems in Al Madinah Al Munawarah Kingdom of Saudi Arabia' (2010) 5 *Journal of Taibah University Medical Sciences* 66, 66-74.

³⁷ General Secretariat, The 11th Annual Report for 2015 (n 16) 22.

dispute. Nonetheless, Table IV shows that between 2014 and 2016, more than 83% of the users of the IDC stated that they were very satisfied with the conduct of the IDC staff. The latter includes members of the Committees who act as adjudicators. Thus, the fact that the users do not select adjudicators makes the IDC attractive given that neutrality provisions may be abused by insurance companies where they include the names of friendly mediators in the insurance contract of adhesion.

Adjudication by the IDC is public in nature and the decisions of the Committees are published on the General Secretariat's website. As such, the IDC does not provide a private and confidential forum for settling disputes. The eight-dimensional service quality instrument used by the General Secretariat does not include privacy but includes 'how hearings were conducted'. Hence, users who prefer to keep their matters private are unlikely to say they are happy with the way the hearing was conducted. However, insurers are more likely to cherish privacy and confidentiality than consumers given that insurers generally do not want proceedings or decisions to establish a negative precedent upon which future policyholders may rely. Also, where the proceedings are confidential, insurers may adopt inconsistent positions knowing that their statements and arguments will not be revealed to other policyholders. It follows that it may be argued that it is more advantageous to consumers that there are no privacy provisions in the CICCL and the Working Rules that protect the confidentiality of the processes. This may explain why Table IV shows that the percentage of users (mostly consumers) who are happy with the way the hearings were conducted by the Committees has always been above 65%. Also, the percentage of users who were not happy with the way the hearings were conducted has always been less than 7%.

5.4.1.4 Flexibility

The IDC does not offer the same flexibility and party autonomy as arbitration. In the IDC, parties cannot choose the substantive law or rules that will serve as the procedural framework for the proceedings. They are bound to the substantive and procedural rules enshrined in the CICCL and Working Rules. Also, the parties cannot determine who will hear the dispute as well as the language that will be used by the Committee. However, the General Secretariat's eight-dimensional service quality instrument shown above revealed that more than 67% of the users were very satisfied with responses to case-related inquiries between 2014 and 2016; more than 70% of the users were very satisfied with the procedures for communicating dates; and more than 56% of the users were very satisfied with the services

provided by the General Secretariat. As such, despite the fact that the IDC does not offer the same flexibility and party autonomy as arbitration, the users of the IDC believe this model takes into account the circumstances, times and place.

It must be noted that prior to the enactment of the CICCL, insurance-related disputes were heard by the Board of Grievances. Hence, the users of the IDC are more likely to compare the IDC to the Board and *Shariah* courts. Thus, the flexibility of the Committees in interpreting and enforcing contracts may be contrasted with the *Shariah* courts and Board of Grievances which (prior to the creation of the IDC) consistently showed no motivation to behave in a way that was benevolent to policyholders, where the insurance contract or an element of the contract violated the *Shariah*. As mentioned above, the Board simply refused to enforce the contract regardless of the fact that this was more detrimental to the policyholder who had paid premiums over a certain period and desperately needed compensation after suffering loss or damage. It may therefore be contended that the users of the IDC believe that this model is not too flexible because it offers security and predictability, and it is also not too rigid because it can adapt to changing circumstances and needs.

5.4.1.5 Predictability

The process is the same among the three Primary Committees. Although the General Secretariat did not seek to determine specifically whether the institutional characteristics of the IDC influence predictability, consistency, and stability, it must be noted that parties that are familiar with adjudication in the Riyadh Primary Committee will be generally prepared to submit a claim in Jeddah and Dammam. This lends predictability to decisional law given that parties may rely on the prior decisions of any of the three Primary Committees. This may also explain why more than 65% of the users stated that they were satisfied with the responses to their inquiries, the communication by the IDC and the way the hearings were conducted. Parties are therefore able to manage their affairs effectively.

In light of the above section showing that the IDC confers specific advantages to users, the next section seeks to determine whether the high level of satisfaction may also be explained by the fairness of the decisions of the Primary Committee and SAMA Appeal Committee.

5.4.2.1 The Relationship between Users' Satisfaction and the Fairness of Outcomes in Primary Committees

In Case No. 360714,³⁸ following an accident, the claimant sought compensation from the policyholder's insurance company under an automobile third-party liability insurance policy. The insurance company made an adverse determination on the grounds that the policy was void for fraud or misrepresentation on the part of the policyholder. The Jeddah Primary Committee ruled in favour of the claimant, holding that the insurance company failed to adduce evidence showing that facts disclosed by the policyholder were incorrect or the policyholder had forged the policy. The Committee then held that since it had been shown that the policyholder was at fault in the accident, the insurance company had to pay for the physical damage to the third party's or claimant's vehicle. Also, the Committee held that the insurance company could not raise a defence of improper disclosure by the policyholder where the claimant is a third party. The insurance company could only raise a partial defence, arguing that the claimant was partially at fault. Thus, the total amount of compensation received by the claimant was reduced according to his degree of fault.

The Committee's decision reveals that third-party insurance is recognised in the KSA as a form of liability insurance purchased by the policyholder for protection against the claims of damages and loss made by a third party. Thus, although conventional insurance is prohibited under Islamic law, the IDC seems to recognise and enforce agreements whereby a party protects itself against the risk of bearing damages suffered by another. Nevertheless, the elements of interest and gambling are present in third-party insurance in the same way as they are present in first-party conventional insurance contracts. The Jeddah Primary Committee does not justify its recognition and enforcement of the contract. It would have been appropriate to state whether third-party insurance is for example allowed as an exception under principles such as *Dharurah* (necessity) and *Hajah* (need). It is also uncertain how the Committee determined that only a partial defence is allowed. It did not cite any Islamic principle or precedent to justify its decision.

Nonetheless, it may be contended that the Primary Committee established that it is unfair for third parties to be harmed by the sale of third-party liability insurance policies that contain illusory coverage. The latter does not eliminate the insurance company's obligation to pay

³⁸ Case No. 360714, Jeddah Primary Committee, Decision No. 343/C/1436 AH.

compensation for third-party claims.³⁹ Although the Committee did not use the term ‘public policy’, it may also be assumed that it held that the insurance company was liable under the insurance policy once it was established that the policy was valid because a contrary decision would violate Saudi public policy. Such public policy is embodied in the *Shariah*,⁴⁰ which all adjudicators in the KSA are required to apply. In other words, injustice is avoided by the enforcement of the insurance company’s promise.

In another case with similar facts, Case No. 370207,⁴¹ the Dammam Primary Committee held that the insurance company was liable to pay compensation to the third party. The Committee also failed to justify its decision to recognise and enforce the contract despite the elements of uncertainty and gambling. It also held that the insurance company should pay additional compensation for the delay caused by its adverse determination. This is because Article 44 of the Implementing Rules provides that the period of indemnity shall not exceed fifteen days from the date of the submission of the claim, unless the insurance company notifies the comptroller. The additional compensation for the unreasonable delay caused by the insurance company may then act as a deterrence and compel insurance companies to pay compensation in a timely manner. This is very important for policyholders or third parties who are in urgent need of money after suffering loss or damage covered by the policy. Nonetheless, the decision renders little or no assistance to the jurisprudence given that the Committee did not weigh or balance the relevant legal considerations. The members of the Committee largely appealed to their own personal values or sense of justice. Nonetheless, as shown in Chapter 3, the CICCL and Working Rules seem to favour legalistic justification given that they allow Committees to cite and apply precedent and even consider principles developed in foreign jurisdictions.

The personal values of the Committee members favour the protection of policyholders where there is uncertainty. Such a pro-policyholder stance may help to explain why the IDC users who are claimants are very satisfied with their experience. They believe in the fairness of the

³⁹ In the same vein, in Case No. 261154, Riyadh Primary Committee, Decision No. 1429-44, the Primary Committee held that after compensating the policyholder, the insurance company may subrogate the policyholder and assume his rights to the claim from a third party at fault. See also Case No. 300734, Riyadh Primary Committee, Decision No. Case No. 261154.

⁴⁰ Public policy in this context may be defined as the set of neutral rules and values that override individual interests and aim to promote or realise public interest (*al-maslaha al-dmm*). See the Egyptian Court of Cassation Decision Nos. 16 and 26, Year 48, 17 January 1979. See also M Berger, ‘Public Policy and Islamic Law: The Modern Dhimmi in Contemporary Egyptian Family Law’ (2001) 8(1) *Islamic Law and Society* 88, 89, 102-105; N Murtaza and U Financial Crimes in Perspective of Public Policy and Islamic Law: Case of Pakistan’ in DS Mutum DS et al (eds), *Advances in Islamic Finance, Marketing and Management* (Emerald 2016) 159-184. JN Neels, ‘The Positive Role of Public Policy in Private International Law and the Recognition of Foreign Muslim Marriages’ (2012) 28(2) *South African Journal on Human Rights* 219, 219-230.

⁴¹ Case No. 370207, Dammam Committee, Decision No. 83/D/1437 AH.

outcomes. However, it does not explain why most insurance companies (and defendants) surveyed by the General Secretariat were also satisfied with their experience. This may be because the Primary Committees have also endorsed insurance companies' interpretation of policies where they were deemed reasonable. In Case No. 360310,⁴² the Riyadh Primary Committee endorsed the insurance company's interpretation of the terms of the policy to the effect that the claimants were not beneficiaries of a life insurance policy and could not claim on the policy. The insurance company argued that only the person whose life was covered had standing to submit a claim to enforce the policy. The Committee agreed, thereby implying that the claimant's expectation of coverage was not reasonable.

Also, in Case No. 330440,⁴³ the policyholder submitted a complaint to the Primary Committee in August 2011 because the policyholder's daughter, who was covered under the policy, suffered injury to her foot as a result of falling on sharp glass and receiving treatment in Cambridge in the United Kingdom. The insurance company refused to pay the monetary compensation to the policyholder for the costs of his daughter's medical treatment because the claim was made outside the coverage period of the policy. The insurance contract at issue was a form a travel insurance that corresponded to the daughter's two international travel documents that covered the periods of June 15 through July 15, 2011, and July 21 through August 20, 2011. It turned out that the daughter was admitted for treatment on July 20, 2011, not in August as the policyholder had alleged. The court found that this was a day prior to the effective date of the second travel insurance document and the insurance company was not required to pay the policyholder's claim as the occurrence was outside of the fixed term agreed to by the parties.

The above cases demonstrate that the Committees focus on what the members consider fair in the circumstances. It is uncertain whether this is based on prevailing preferences or moral principles. Nonetheless, it is uncertain whether it is fair to use such preferences and principles as the basis for settling disputes where they have not acquired authority by reason of their adoption by legislators or courts. It follows that it is uncertain whether subsequent Committees are duty-bound to apply the same preferences and principles.

⁴² Case No. 360310, Riyadh Primary Committee, Decision No. 276/T/1436 AH.

⁴³ Case No. 330440, Riyadh Primary Committee, Decision No. 1433-210.

Nonetheless, in some cases, logical deductions lead to sound and fair outcomes. In Case No. 360134 for example,⁴⁴ the Riyadh Primary Committee held that a claimant must satisfy a threshold requirement of sufficient standing before the claimant may be permitted to proceed with a claim for review by the Committee. Thus, the claimant must demonstrate to the Committee sufficient connection to the action to support the claimant's participation in the dispute resolution process. Thus, only the policyholder may sue to enforce rights in the policy or claim compensation under the policy.⁴⁵ But, as noted above, it is uncertain whether, as a general rule, the Committee recognises the rights of third parties for whose benefit the contract was made.

It may be argued that in practice the Committees provide protection to policyholders by conceiving of the problems such as illusory coverage or unconscionable advantages in policy provisions as interpretive. Also, their interpretation of the terms of policies is in accordance with the stance adopted in other jurisdictions to interpret the terms of insurance contracts.⁴⁶ For example, the fact that the non-drafting party's interpretation is disregarded when it is unreasonable has been described as the 'basic bedrock insurance rule of contra proferentem.'⁴⁷ Other decisions of the IDCs support the argument that the Committees generally decide cases not by established rules of law but by moral preferences and policy considerations. Hence, the decisions are largely justified on their merits rather than legal prescriptions.

In Case No. 361263, the Dammam Primary Committee interpreted the terms of the insurance policy in light of the parties' reasonable expectations.⁴⁸ Maintaining that the principles of compensation and indemnification are among the most important principles in insurance law, the Committee held that a clause providing for the payment of a predetermined amount by the insurance company may only be enforced where the amount exceeds the repair value of the damaged vehicle. This is because the parties both read and assented to the terms of the policy and therefore had a reasonable expectation that the predetermined amount would be paid to the policyholder in the event of damage or loss. Expectation was deemed reasonable in light of the moral preferences of the members of the Committee.

⁴⁴ Case No. 360134, Riyadh Primary Committee, Decision No. 323/R/1436 AH.

⁴⁵ See also Case No. 320247, Riyadh Primary Committee, Decision No. 21/T/1437 AH.

⁴⁶ S Williston, *A Treatise on the Law of Contracts* (WHE Jaeger edn, 3rd edn, Baker, Voorhis and Co 1959) 621.

⁴⁷ EM Holmes, *Holmes' Appleman on Insurance Law* (2nd edn, LexisNexis 1996) 99.

⁴⁸ Case No. 361263, Dammam Primary Committee, Decision No. 259/D/1436 AH.

Also, in Case No. 290773,⁴⁹ the claimant sought to recover damages from an insurance company under a contractor's all risks insurance policy.⁵⁰ However, the insurance company argued that the damages sought by the claimant, despite being covered by the insurance policy, fell within the deductible that was the responsibility of the claimant. The Committee examined the language of the contract and noted that the claimant had knowingly agreed to the deductible and could not reasonably expect that the deductible would not be his responsibility before recovering damages from the insurance company.⁵¹ Although it is uncertain whether deductibles are allowed under Islamic law, the Committee neither appealed to any Sharia principle or provision of the CICCL. Once again, it determined what was, in the opinion of the members, logical and fair in the circumstances.

These decisions may be said to be in line with Llewellyn's contention that it is fair to enforce standardised terms in a contract where they are not manifestly unfair and do not undercut the meaning or significance of the bargained-for terms.⁵² It may then be argued that although there is no established interpretive principle for standardised insurance policies in the KSA, the users of the IDC are satisfied with their experience because the Primary Committees prefer interpretations that are fair and reasonable to interpretations that lead to unreasonable or unfair outcomes.

Also important is that Primary Committees do not refuse to hear claims because they are based on conventional insurance contracts which are generally not *Shariah*-compliant.⁵³ They deal with this problem in different ways. The Primary Committee has for example held that an agreement between the insurance company and the policyholder for the payment of a specified amount of money to the latter's relatives in the event of his death may be enforced as *wergild*. This is an ancient Middle Eastern and Germanic custom of the restorative payment of a penalty to the relatives of a person who had been killed.⁵⁴ In Case No. 370783,⁵⁵ the Dammam Primary Committee held that where the policy covers the vehicle that caused the accident resulting in the death of the claimant's relative, the defendant is obligated to pay compensation to the claimant if it is established that the defendant was solely responsible for the accident. This is in accordance with Article No. 8 of the Executive Regulation of Traffic Law, as well as the

⁴⁹ Case No. 290773, Riyadh Primary Committee, Decision No. 1432-4.

⁵⁰ Decision of the Primary Committee (Riyadh) 1432-4.

⁵¹ See also Case No. 301101, Riyadh Primary Committee, Decision No. 1429-67.

⁵² K Llewellyn, *The Common Law Tradition: Deciding Appeals* (Little Brown & Co 1960) 370-371.

⁵³ See Chapter 2.

⁵⁴ See RC Winters et al, *An Introduction to Crime and Crime Causation* (CRC Press 2014) 24.

⁵⁵ Case No. 370783, Dammam Committee, Decision No. 192/D/1437 AH.

Unified Compulsory Motor Vehicle Insurance Policy. The insurance company may then assist the defendant in making the payment. Thus, the claimant seeks compensation from the defendant and does not rely on the insurance contract to obtain compensation from the insurance company. As shown above, the Committees have also focused on the reasonable expectations of the parties to determine whether the claimant is entitled to compensation. Nonetheless, unlike in Case No. 370783, the Primary Committee has hardly appealed to the prescriptions of the relevant statutes or IDC precedent. The members rely on their own personal sense of justice. This is arbitrary and renders no assistance to the jurisprudence.

The next section seeks to determine whether the SAMA Appeal Committee also relies on moral preferences and personal values or legal considerations to protect policyholders against arbitrary adverse coverage determinations by insurance companies.

5.4.2.2 The Relationship between Users' Satisfaction and the Fairness of Outcomes in the SAMA Appeal Committee

Articles 20 and 22 of the CICCL state that appeals from the Primary Committees are to be submitted to the Board of Grievances. The authority of the Board of Grievances to hear appeals was further granted in the Law of the Board of Grievances which provided that administrative courts within the Board were competent to decide on 'cases of repeal of final administrative decisions submitted by all concerned, whenever a challenge is about lack of capacity, there is a deficit in form or in reasoning, violation of laws and regulations, misapplication or misinterpretation of them, or misuse of power, including disciplinary decisions, and all decisions issued by quasi-judicial bodies.'⁵⁶ Given that the Primary Committee is a quasi-judicial body, its decisions fall within the jurisdiction grants of both the CICCL and the Board of Grievances Law.

However, subsequent legislation provided for the creation of an Appeal Committee within SAMA to hear grievances against the decisions of the IDC's Primary Committees. The Appeal Committee was officially formed and commenced operations in 2012.⁵⁷ The Committee was later reformed in 2013 at the direction of the Council of Ministers for a period of three years.⁵⁸

⁵⁶ Law of the Board of Grievances issued under Royal Decree No 78/M dated 19/9/1428H, art 13(B).

⁵⁷ Royal Order No 35258 dated 22/9/1434H.

⁵⁸ Council of Ministers' Resolution No 457 dated 27/11/1435H.

The Appeal Committee does have the authority to limit its examination of decisions to those under 50,000 riyals; but, such a limitation is not mandatory.⁵⁹

An assessment of the decisions of the Appeal Committee reveals that they have equally been based on the members' evaluation of the conscionability of the contractual terms and the reasonable expectation of the parties. Little regard is given to legalistic justification. In Appeal No. 2370029,⁶⁰ the Appeal Committee affirmed the Primary Committee's decision that a clause in an insurance contract that limits the amount of exposure that an insurance company faces in the event a claim is made violates the Civil Liability Rules issued by SAMA. Hence, the Appeal Committee views limitation of liability clauses as exculpatory clauses that are unenforceable where they violate SAMA's policy. Both SAMA and the SAMA Appeal Committee have therefore adopted the view that an obligation owed by a party under a contract outweighs the regard for freedom of contract. This is in accordance with the tradition of strict judicial scrutiny of contractual clauses that specify an agreed amount of damages or compensation upon breach or ripeness of a claim.⁶¹ Nonetheless, this tradition has not been expressly adopted by the Saudi legislator or court. The Appeal Committee therefore failed to justify its decision on the grounds of precedent or any specific provisions of the CICCL.

It may however be assumed that Appeal Committees will refuse to enforce exculpatory clauses that deny policyholders the right to seek compensation from the insurance companies if the Committees find that the clauses are contrary to SAMA's policy. Nonetheless, it remains uncertain whether the Committees apply a specific rule governing the enforcement of limitation of liability clauses. Appeal No. 2370029 was an opportunity for the Appeal Committee to craft a clear rule that is tailored to the Saudi market and can be applied consistently. This is because caution may be exercised to ensure that risk is not allocated to insurance companies to such an extent as to jeopardise the viability of the insurance market due to exposures that are largely disproportionate to the income derived by the companies. They ought to be able to limit their liability in specific instances.

⁵⁹ Working Rules, Article 8.

⁶⁰ Appeal No. 2370029, Appeal Committee, Decision No. 96/A/1437 AH.

⁶¹ For analyses of the approach in the United States, see JN Cohen, 'Sound the Alarm: Limitations of Liability in Alarm Service Contracts' (2016) 85(2) *Fordham Law Review* 813, 819; CJ Geotz and RE Scott, 'Liquidated Damages, Penalties and the Just Compensation Principle: Some Notes on an Enforcement Model and a Theory of Efficient Breach' (1977) 77 *Columbia Law Review* 554, 554.

In Appeal No. 2370054,⁶² the Appeal Committee overruled the Primary Committee in part by holding that an insurance company cannot be required to pay for delay where it only became aware of the claim on the date of the first hearing at the Primary Committee. The Appeal Committee ruled that the charge payable by the insurance company for withholding compensation past the statutory timeframe should be calculated from the date of the first hearing at the Primary Committee. This is because it would be unconscionable to impose an obligation on the insurance company to indemnify policyholders who have suffered loss or damage but have not submitted a claim to the insurance company. Moreover, the requirement to submit a claim before being indemnified does not deprive the policyholder of coverage that is reasonably expected,⁶³ except where compensation is then withheld after the claim has been made.

The Appeal Committee also placed emphasis on the reasonable expectation of the parties in Appeal No. 2370026⁶⁴ where it held that as a factual matter, the policyholder reasonably expects to be indemnified when a claim is submitted in a timely manner. Thus, the submission of a claim to the insurance company in a timely manner creates a reasonable expectation of indemnification. Although the Appeal Committee did not specifically refer to the ambiguity principle and *contra proferentem*, it may be contended that it applied these principles to interpret the ambiguous language in the insurance policy to the effect that the insurance company was under an obligation to indemnify the policyholder who had submitted a valid claim in a timely manner. The use of these principles as interpretive devices is well established in other jurisdictions as noted in Chapter 2. Thus, the fairness of the outcomes of proceedings in the Appeal Committee was largely enhanced by their indirect use. Nonetheless, it is uncertain whether the Appeal Committee will consistently focus on the reasonable expectations of the parties and the conscionability of the terms of the contract. Also, if this is answered in the affirmative, it is uncertain whether the Appeal Committee, as well as the Primary Committees, will consistently defer to certain standards to determine what constitutes reasonableness and conscionability.

⁶² Appeal No. 2370054, Appeal Committee, Decision No. 139/A/1437 AH.

⁶³ See also Appeal No. 3370036, Appeal Committee, Decision No. 191/A/1437 AH and Appeal No. 1330265, Appeal Committee, Decision No. 629/A/1436 AH where the Appeal Committee upheld the Primary Committee's decision of enforcing the terms of the policy on the basis of what the parties reasonably expected on the basis of their interpretation of the terms.

⁶⁴ Appeal No. 2370026, Appeal Committee, Decision No. 79/A/1437 AH.

It must be noted that despite the importance of an outcome-based assessment as shown above, it is difficult to determine whether the high level of satisfaction with IDCs may be explained by the users' acceptance of the administrative justice system due to the perceived fairness of the procedure rather than their perception of the outcomes. Tyler and Huo examined the experience of the general public with the justice system of the United States and found that perceptions of the process accounted for 44 per cent of variance in satisfaction while the perception of outcomes accounted for only 1 per cent.⁶⁵ Also, Rottman's survey of members of the public in the state of California identified the belief that courts deliver procedural justice as the strongest indicator of the public approval of courts.⁶⁶

Although the surveys conducted by the General Secretariat, discussed above, are not reported in detail, Tables IV and V show that procedural fairness accounts for more variance than any variable. It comprised the following factors: procedures for communicating hearing dates, how hearings were conducted, time taken to resolve the case, and compliance with the timeframe for delivering the ruling. The respondents were therefore keen on whether the Committees followed the rules, respected the rights of parties, and were sufficiently flexible to hear parties' arguments and assess their expectations. Nonetheless, the analysis of the findings of the surveys and decisions of the Committees shows that the high level of satisfaction with IDCs may be explained by both the users' perceived fairness of the procedure and their perception of the outcomes. Hence, the drive for efficiency has not been detrimental to the fairness and effectiveness of the system. The next section seeks to determine how the IDC in practice may then be compared to the other options of insurance dispute resolution.

5.4.3 Comparing the IDC to Litigation and Arbitration

It may also be argued that the high level of satisfaction with the IDC may be explained by the fact that users believe the IDC is better than litigation and arbitration. The flexibility of the Committees in interpreting and enforcing contracts may be contrasted with the *Shariah* courts and Board of Grievances which (prior to the creation of the IDC) consistently showed no motivation to behave in a way that was benevolent to policyholders, where the insurance contract or an element of the contract violated the *Shariah*. The Board of Grievances for example consistently declined to hear disputes involving insurance contracts that violated the

⁶⁵ TR Tyler and YJ Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (Russell Sage Foundation 2002) 77.

⁶⁶ DB Rottman, 'Trust and Confidence in the California Courts: A Survey of the Public and Attorneys, Part I: Findings and Recommendations' (2005) *National Center for State Courts* 1, 24 <https://www.courts.ca.gov/documents/4_37pubtrust1.pdf> accessed 14 November 2019.

Shariah regardless of whether the policyholder desperately needed compensation and had relied on the policy or reasonably expected that he would be indemnified in the event of loss.⁶⁷ The Board of Grievances' intransigence virtually negated all coverage, which in many cases was unfair to the policyholder.

The stance adopted by *Shariah* courts may be explained by the fact that insurance contracts were not recognised and enforced in the KSA until the *takaful* or cooperative insurance schemes were developed. This is discussed in Chapter 2. Given that the *takaful* is built on the principles of the *Shariah*, courts assumed that it was the only insurance contract that could be enforced under the *Shariah*. Also, the absence of codification made it difficult for *Shariah* courts to assess conventional insurance contracts in light of specific guidelines. It was easier to simply refuse to recognise the contracts.

Prior to the creation of IDCs, foreign parties therefore relied on foreign arbitral awards. However, these awards often endorsed insurance contracts that provided for interests (*riba*) or activities considered speculation or hazard (*gharar*), which are forbidden by the *Shariah*. In Decision No. 11/D/A/15 of 2008 for example, the Board of Grievances refused to recognise and enforce an arbitral award because it violated the *Shariah*. The claimant, a Saudi company, had demanded that the charge of interest should be dropped because they had expected that this would be unenforceable in the KSA. However, the foreign arbitrator maintained the charge and the Board of Grievances refused to enforce the award.

Also, in *Jadawel International (Saudi Arabia) v Emaar Property PJSC (UAE)*, the International Chamber of Commerce (ICC) issued an award dismissing Jadawel's claim of \$1.2 billion in damages from Emaar for breach of contract. Jadawel was also required to pay legal costs to Emaar. The Board of Grievances refused to enforce the ICC award, re-examined the merits of the dispute and ordered Emaar to pay damages of \$250 million to Jadawel.⁶⁸ This case also shows that despite the advantages of arbitration shown in Chapter 4, the difficulty to enforce arbitral awards makes this option less attractive.

⁶⁷ See the following Board of Grievance cases: Case No. 3/1136 Year 1430; Case No. Q/2/7402 Year 1432; Case No. Q/2/2886 Year 1427H; Case No. 2887 Year 1433H; Case No. Q/1/488 Year 1405H.

⁶⁸ See E Al Tamimi, *The Practitioner's Guide to Arbitration in the Middle East and North Africa* (JurisNet 2009) 371. However, the Enforcement of Law of 2012 transferred the powers of enforcement from the Board of Grievances to an enforcement judge. Article 9 provides for compulsory enforcement upon the presentation of the final arbitral award and an executive deed. Nonetheless, the enforcement judge must comply with the principle of reciprocity, recognising only awards from countries that would enforce Saudi awards and judgements. Also, the appeal of the enforcement judge's decision suspends enforcement.

It must be pointed out that the Board of Grievances has been flexible at other times holding that the illegal or void part of a contract is considered severed from the contract, in order for the contract to be enforced as if it did not contain the illegal or void part.⁶⁹ Nonetheless, it is still largely uncertain when the *Shariah* courts would refuse to recognise an insurance contract or arbitral award and when they will sever the non-compliant clauses so that the remaining of the contract or award survives. This confusion is compounded by the Islamic Fiqh Council Decision No. 5 of 12 September 1977 (First Session) that maintained that conventional insurance contracts violate the *Shariah*, and only cooperative insurance (*takaful*) contracts should be enforced in the KSA. This was a major obstacle to the liberalisation and modernisation of the Saudi insurance market. Although all thirty-two insurance companies in the market are required to operate under the *takaful* system,⁷⁰ they also enter into agreements to cover losses that may arise from international sale contracts. Multinational insurance companies operating in the KSA such as Allianz SF, AXA and MetLife AIG therefore enter into insurance agreements or issue policies that cover eventual losses or damages of the subject matter of contracts involving non-Saudi businesses. Such agreements or policies may contain elements that violate the *Shariah*. The decision not to recognise or enforce them may be detrimental to the Saudi insurance market as well as Saudi policyholders seeking indemnification under the agreements.

Some Islamic scholars have argued that where there are no uncertainties regarding the obligations of the parties, as well as no illicit gains made by one party, the contract may be enforced under the *Shariah*.⁷¹ It seems, unlike the *Shariah* courts, the IDCs have adopted the latter approach. This is logical because it has been noted that quasi-judicial bodies such as the Committee for the Settlement of Insurance Disputes and subsequently the IDCs were established to adjudicate disputes involving insurance contracts that *Shariah* courts considered invalid or unenforceable.⁷² Thus, operating out of the *Shariah* court system, IDCs have been able to focus on the reasonable expectations of parties and the fairness of the procedures and

⁶⁹ See Decision No. 1851/1415 of 1994; Decision No. 1903/1415 of 1994; and Decision No. 208/1418 of 1997.

⁷⁰ See Albilad Capital, 'Saudi Insurance Sector' (2018) Sector Reports 1, 4 <http://www.albilad-capital.com/Research_EnglishReport/InsuranceSectorQ417EN.pdf>, accessed 14 November 2019.

⁷¹ See J Zarabozo, 'The Question of Insurance Outside of the "Lands of Islam"' (2003) AMJA Conference, Copenhagen 1, 5 <<http://www.jamaalzarabozo.com/audio/insurance.pdf>>, accessed 14 November 2019; M Ustaoglu, 'Public Awareness, Understanding and Attitudes Towards Interest-Free Insurance (Takaful) Services Evaluation by Education Level: Survey Based on Empirical Analysis for Turkey' (2015) 50(4) *Journal of Asian and African Studies* 445, 445-456.

⁷² See MI Aleisa, *A Critical Analysis of the Legal Problems Associated with the Recognition and Enforcement of Arbitral Awards in Saudi Arabia: Will the New Saudi Arbitration Law 2012 Resolve the Main Legal Problems?* (Unpublished PhD Dissertation, University of Essex 2016) 32-34.

outcomes. Given that ambiguity or uncertainty is forbidden by the *Shariah*, where a dispute is based on an ambiguity in the contract, the *Shariah* courts would refuse to hear the case because the contract is deemed invalid.⁷³ Nonetheless, as shown above, the IDCs would hear the case and resolve the ambiguity by taking into account the reasonable expectations of the parties. Surprisingly, the IDCs are applying a traditional Islamic philosophy of prioritising the legitimate expectations of parties, which the *Shariah* courts have generally overlooked.⁷⁴

5.4.4 Comparing the IDC to Mediation and Negotiation

It may also be argued that the high level of satisfaction with the IDC may be explained by the fact that users believe it is better than mediation and negotiation. The first point of contact for the claimant in the IDC process is the General Secretariat. This is because the General Secretariat is tasked with providing administrative support to parties to insurance coverage disputes. Article 13 of the Working Rules provide that the General Secretariat shall provide trained impartial persons with authoritative knowledge to assist the parties in reaching a settlement. When mediation fails, the General Secretariat acts as the office of administration that provides resources and information for the administration of the IDC. It receives all case documents, manages cases, and coordinates the parties and the Committees.

In the annual reports discussed above, the General Secretariat did not provide an estimate of the total number of insurance coverage disputes that were resolved between 2014 and 2016. Thus, it is difficult to determine the percentage of disputes resolved by the IDCs and other forms of dispute resolution. Nevertheless, given that the IDC dealt with most of the disputes involving small claims. Also, parties are required to seek mediation at the General Secretariat before submitting claims to the relevant Primary Committee. Given that negotiation naturally precedes mediation, it may be contended that all the disputes resolved through the IDC first went through negotiation and then mediation.

The General Secretariat noted that in 2014, 148 cases were settled via mediation.⁷⁵ In 2015, 337 cases were settled via mediation, resulting in an increase by 56.08 percent.⁷⁶ However, in

⁷³ See M Zarqa, *The General Fiqhi Entrance* (Dar Alqalam 1998) 742.

⁷⁴ See G Sayen, 'Arbitration, Conciliation, and the Islamic Legal Tradition in Saudi Arabia' (2003) 24(4) *University of Pennsylvania Journal of Economic Law* 909, 943; NJ Coulson, *Commercial Law in Gulf States: The Islamic Legal Tradition* (Graham and Trotman, 1984) 82-93.

⁷⁵ 2014 Annual Report, 22.

⁷⁶ 2015 Annual Report, 23.

2016, the number fell to 143.⁷⁷ The General Secretariat did not explain the rise and fall in the numbers between 2014 and 2016. Also, it did not conduct a survey on the parties in mediation in order to determine their satisfaction with procedures and/or outcomes of this ADR option. Nonetheless, in 2016, 1672 disputes were resolved (see Table I above) and 1815 complaints in total were submitted to the General Secretariat. Given that parties are required to seek mediation first, out of the 1815 complaints submitted, only 143 cases were resolved via mediation. Thus, it may be argued that mediation is not an effective option given that the vast majority of cases proceeded to the Primary Committees.

The findings of the study conducted by the General Secretariat are consistent with the results of the study conducted by Alkhenizan and Shafiq on the litigation for medical errors in the KSA.⁷⁸ The latter results are to the effect that only 7 per cent of cases that reached the *Shariah* Medical Panels⁷⁹ were resolved through mediation. The *Shariah* Medical Panels are set up in a similar way as the Primary Committees of the IDC and parties are required to first submit disputes through the mediation process of the Ministry of Health and relevant hospital investigation committee or the Saudi Centre for Patient Safety. Nonetheless, the mediation process is neither transparent nor formally structured. The statistics provided by Alkhenizan and Shafiq show that a large majority of disputants are not satisfied with this ADR option, as 93 per cent of cases proceed to the *Shariah* Medical Panels.⁸⁰ These statistics, as well as those reported by the General Secretariat support the conclusion drawn in Chapter 4 that despite the fact that the culture of negotiation and mediation was adopted and promoted by the Holy Prophet, and subsequently, the successors of the Holy Prophet, Khalifahs, they are not viable options of dispute resolution because the parties can reject the settlement agreement recorded by the negotiator and mediator. The latter are without authority to impose a settlement. Also, there is no clearly defined mechanism by which negotiators and mediators in the KSA may maintain neutrality.

5.5 The Disconnect between Legal Theory and Praxis

This chapter has examined the practical effects of the use of the IDC option, focusing on an objective and external observation of this dispute resolution option. As noted above, the

⁷⁷ 2016 Annual Report, 27.

⁷⁸ See AH Alkenizan and MR Shafiq, 'The Process of Litigation in Medical Errors in Saudi Arabia and the United Kingdom' (2018) 39(11) *Saudi Medical Journal* 1075, 1075-1081.

⁷⁹ The panels were to resolve disputes involving health care professionals. See Articles 31 and 32 of the Law of Practicing Healthcare Professionals of 2005.

⁸⁰ Alkenizan and Shafiq (n 78).

practical inquiry aligns with the attempt by legal realism to eliminate any contradiction between legal theory and legal praxis. In light of the findings discussed above, it may be stated that there are contradictions between the theoretical analyses conducted in chapters 3 and 4 the practical application of insurance law. Thus, it is important that these contradictions are eliminated. Table VI below summarizes the contradictions.

Table VI: The disconnect between the theoretical analysis and practical inquiry

Effectiveness of the IDC	Results of the Theoretical Analysis	Results of the Practical Inquiry
Duration and cost	When compared to litigation and other forms of ADR, the IDC does not provide a shorter and more cost-effective path towards making a comprehensive set of remedies available to policyholders.	Although less than 50% of the users were very satisfied with the time taken to resolve their cases in 2014 and 2015, in 2016, 53% were satisfied. Also, the Committees can take up to six months at the initial stage and another six months or longer if appealed. Litigation on the other hand lasts for up to two years or more.
<i>Shariah</i> compliance	The Primary Committees do not refuse to hear claims because they are based on conventional insurance contracts which are generally not <i>Shariah</i> -compliant. However, the Committees cannot overlook the <i>Shariah</i> given that the Constitution of the KSA is the Holy Quran.	Where there are no uncertainties regarding the obligations of the parties, as well as no illicit gains made by one party, the contract may be enforced under the <i>Shariah</i>
Impartiality	There are no neutrality provisions in the CICCL and Working Rules. Parties cannot select the adjudicators and must rely on IDC members selected by the General Secretariat. Hearings are public in nature and Committee Decisions are published. The CICCL and Working Rules are silent on the issue of confidentiality.	More than 83% of the users of the IDC stated that they were very satisfied with the conduct of the IDC staff, which includes members of the Committees who act as adjudicators. More than 65% of users were satisfied with the way hearings were conducted and less than 7% were unhappy.

Flexibility	The flexibility offered by the IDC is poorly defined and may obstruct the Committees from complying with the <i>Shariah</i> . The IDC does not offer the same flexibility as arbitration and is almost as rigid as litigation.	More than 67% of the users were very satisfied with responses to case-related inquiries; more than 70% of the users were very satisfied with the procedures for communicating dates; and more than 56% of the users were very satisfied with the services provided by the General Secretariat.
Predictability	The IDC rules do not provide any guidance on a timeframe within which a case must be concluded, leaving the parties with significant uncertainty as to how long their case will continue. The provision adopting the principle by which IDC Committees are bound to precedents is ill-defined and the Working Rules are ambiguous regarding the basic elements that all Committee decisions should contain, how decisions should be enforced, and the grounds for objection and appeal.	65% of the users stated that they were satisfied with the responses to their inquiries, the communication by the IDC and the way the hearings were conducted. Parties that are familiar with adjudication in one Primary Committee will be generally prepared to submit a claim in other Committees.

Source: Researcher

Table VI shows that there are contradictions between legal theory and legal praxis. It may be important to eliminate these contradictions in order to properly depict the essential display between theory and practice in the complex and interconnected world of insurance dispute resolution. As Kevelson⁸¹ advised, what is needed is not further doctrinal analysis but a method that demonstrates that discovery and inquiry in thought are representations of actual phenomenal processes in the world of experience. In other words, the theories and doctrines analysed in the previous chapters must be integrated with the working of the IDCs in practice. An attempt was made in the previous section to achieve this objective. It was argued that the high level of satisfaction of users revealed in the statistics published by the General Secretariat

⁸¹ Kevelson (n 12) 359.

may be highly correlated with the fairness of the decisions of the Primary Committees and the Appeal Committee.

All the decisions published by the General Secretariat were critically analysed and it was revealed that the Committees focus on what the members consider fair in the circumstances. Thus, in practice, the Committees provide protection to policyholders by conceiving of the problems such as illusory coverage or unconscionable advantages in policy provisions as interpretive. As such, most users of the IDC (who are consumers) may be satisfied with their experience, not because privacy, flexibility, expedience are offered but because the Committees decide cases on the basis of moral preferences and policy considerations that favour consumers. However, these decisions may be justified on their merits but not by the relevant legal prescriptions. Also, although Primary Committees do not refuse to hear claims because they are based on conventional insurance contracts which are generally not *Shariah*-compliant, it is uncertain whether they can consistently overlook the *Shariah*. Such an approach is not sustainable in the KSA where the Constitution is the Holy Quran. Nonetheless, it remains difficult to state whether the high level of satisfaction with the IDC may be explained by perceptions of the process (as shown in Table VI) or the fairness of the outcomes as shown in section 5.4.2 or simply by the fact that the IDC is better than the other dispute resolution options as shown in sections 5.4.3 and 5.4.4

5.5 Conclusion

This Chapter has used the findings of surveys conducted by the General Secretariat and the decisions of the IDC Committees to show that the Saudi legislator's choice of the administrative tribunal model for resolving insurance coverage disputes is justified in practice. The surveys show that the data collected by the General Secretariat reveal that the total number of cases received by the three Primary Committees increased by more than 45 per cent between 2014 and 2016. Also, a vast majority of the persons surveyed by the General Secretariat are happy with the registration of their claims, the conduct of the Committee personnel (including the clerks and adjudicators), the responses to their inquiries, the conduct of the hearing, compliance with the scheduling requirements, and the quality of electronic services provided by the General Secretariat. The majority of the respondents were claimants, and the majority of claimants were policyholders who submitted small claims. Thus, it may be contended that the majority of policyholders with small claims who have challenged adverse determinations by insurance companies in IDCs have been satisfied with their experience.

Also, the analysis of the findings of the surveys and decisions of the Committees shows that the high level of satisfaction with the IDC may be explained by the privacy, flexibility, and neutrality offered by the CICCL and Working Rules, as well as the predictability of the process and outcome. It is also argued that the high level of satisfaction may be explained by both the users' perceived fairness of the procedure and outcomes. Hence, the drive for efficiency has not been detrimental to the fairness and effectiveness of the system. It must however be noted that the General Secretariat's data does not include demographic details. Thus, a profile of respondents cannot be developed based on their answers. No distinction was made between the perspectives of claimants who are policyholders and claimants who are insurance companies. Thus, in each case, it is uncertain whether the satisfaction of claimants who are policyholders is linked with the same variables as the satisfaction of claimants who are insurance companies. Also, the General Secretariat's surveys do not include an assessment of the users' satisfaction with the outcomes of the dispute resolution process in the Primary Committees. Then the reports do not discuss the methodology used to assess the representativeness of the sample.

Notwithstanding, the practical inquiry has also enabled the researcher to ascertain the standards used by IDC Committees to determine whether a contract provides actual or illusory coverage and when the policyholder should reasonably expect to be indemnified. These standards protect policyholders against arbitrary adverse coverage determinations by insurance companies. Operating out of the *Shariah* court system, some Committees have been able to focus on the reasonable expectations of parties and the fairness of the procedures and outcomes. Where for example a dispute is based on an ambiguity in the insurance contract, the *Shariah* courts are more likely to refuse to hear the case because the contract would be deemed *Shariah* non-compliant. Nevertheless, some Committees have heard such cases and resolved the ambiguities by taking into account the reasonable expectations of the parties. Nonetheless, the decisions are not decided by reference to the CICCL or precedent. Thus, it is uncertain whether the Committees will consistently defer to the same moral preferences and policy considerations to satisfy the parties. What this chapter nevertheless accomplishes is that it shows that the shortcomings of the IDC identified by the doctrinal analysis conducted in Chapters 3 and 4 do not adversely affect this administrative tribunal in practice. The next chapter attempts to determine why. In other words, the next chapter seeks to explain the disconnect between legal theory and praxis by focusing the inquiry on the perceptions and justifications of IDC adjudicators. The latter are in the best position to explain why they sometimes defer to moral

preferences and policy considerations and why users are satisfied with their experience with the IDC despite the shortcomings of the model.

Chapter 6: A Qualitative Study of the Perceptions of IDC Adjudicators: Reconciling the Doctrine and Practice

6.1 Introduction

In Chapter 5, it was noted that it is surprising that the IDC enjoys a high level of institutional legitimacy despite the absence of clear guidance by the Working Rules regarding the Committees' use of precedent, what the content of the Committees' decisions must entail, and what the procedures for enforcing the decisions should be. Nonetheless, the researcher argued that the level of satisfaction of parties, specifically consumers or policyholders, is strongly linked with their satisfaction with the outcomes of the hearings or whether they believe the adjudicator's decision is fair. Empirical data was collected from a sample of IDC adjudicators to test this theory. This Chapter discusses and analyses the findings of the test.

The study undertaken was qualitative because such studies generally seek to understand people or phenomena as they occur in their natural environment.⁸² Given that behaviours, including learning and decision-making, are very complex, it is important that they are examined. Qualitative research is exploratory in nature and enables the researcher to develop theories and explanations of the phenomenon that he or she has observed.⁸³ In this study, the researcher focused on adjudication in the IDC, and more particularly how IDC adjudicators perceive the IDC as a dispute resolution option, and what they do to protect consumers or policyholders challenging arbitrary adverse coverage determinations by insurers. Thus, the research question that this Chapter seeks to answer is whether consumers are satisfied with the IDC. Answering this question enables the researcher to determine the relationship between the doctrinal analysis of the law governing dispute resolution by the IDC (conducted in Chapters 3 and 4) and the practical inquiry conducted in Chapter 5.

The qualitative study was approached using the five-stage process developed by Hess.⁸⁴ This involved the study design and ethics, sampling, data collection, data analysis, and the report.

⁸² See P Aspers and U Corte, 'What is Qualitative in Qualitative Research' (2019) 42(2) *Qualitative Sociology* 139, 139-141; M Bengtsson, 'How to Plan and Perform a Qualitative Study Using Content Analysis' (2016) 2 *NursingPlus Open* 8, 8-9; AL Strauss and JM Corbin, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (2nd edn, Sage 1998) 10-11.

⁸³ B Johnson and L Christensen, *Educational Research: Quantitative, Qualitative, and Mixed Approaches* (4th edn, SAGE 2012) 366-367.

⁸⁴ GF Hess, 'Qualitative Research on Legal Education: Studying Outstanding Law Teachers' (2014) 51(4) *Alberta Law Review* 925, 928-938. The five-stage process is based on a synthesis of two important studies on educational research. The first study conducted by Johnson and Christensen (n 2, 377-378) proposed eight steps for qualitative

This chapter explains how the researcher accomplished each phase. Emphasis is placed on the discourse analytic method which the researcher employed to capture and analyse the perspectives of the IDC adjudicators. It is shown that from a holistic viewpoint, the IDC adjudicators believe that consumers are satisfied with the IDC adjudication because the procedures are cost-effective and speedy, the Committees are impartial and apply Islamic law, the procedures are flexible, and decision-making is predictable. This confirms the theory developed by the researcher.

6.2 Study Design and Ethics

The components of this study were informed by a critical review of the existing literature undertaken in Chapters 2, 3 and 4, as well as the critical examination of IDC cases undertaken in Chapter 5. The literature comprises books, peer-reviewed journal articles and conference presentations describing how legislators, courts and commentators in many jurisdictions have developed mechanisms to help policyholders who are denied coverage by insurers in an arbitrary manner. It is for example noted in Chapter 2 that in some jurisdictions such as the United States and the United Kingdom, the policyholder may ask the court or tribunal to assess the policy under the illusory coverage doctrine. Some commentators have pointed out that the recognition of the doctrine is justified because it would be unfair to enforce the exclusion clause as it was written given that the clause makes the coverage worthless.⁸⁵ Other commentators have noted that the interpretation of insurance contracts in the United States and other jurisdictions such as the United Kingdom is generally geared towards determining the nature of the bargain that both parties sought to make, thereby justifying the courts' suspicion of policies that contain illusory coverage.⁸⁶ In the same vein, many commentators have observed that courts in the United States, Canada and United Kingdom protect policyholders or consumers by denying insurance companies unconscionable advantages in insurance policies and honouring the reasonable expectations of the policyholders or intended beneficiaries.⁸⁷

research. These include, selecting a topic, determining research questions, designing the study, collecting data, analysing data, generating results, validating the results, and writing a report. The second study conducted by Creswell placed emphasis on six steps. These steps include identifying the research problem, critically reviewing the literature, ascertaining the purpose for the research, collecting data, analysing and interpreting the data, and reporting and evaluating the study. See JW Creswell, *Educational Research: Planning, Conducting, and Evaluating Quantitative and Qualitative Research* (4th edn, Pearson 2012) 7-11.

⁸⁵ See for example, I Weiss, 'The Illusory Coverage Doctrine: A Critical Review' (2018) 166 *University of California Law Review* 1545, 1548-1554; G Munro, 'Exposing "Illusory" Underinsured Motorist Coverage' (2003) *Trial Trends* 28, 28-36.

⁸⁶ See S Williston and RA Lord, *A Treatise on the Law of Contracts* (4th edn, West Group 1993) 32:2.

⁸⁷ See RE Keeton, 'Insurance Law Rights at Variance with Policy Provisions (Parts I and H)' (1970) 83 *Harvard Law Review* 961; RE Keeton, 'Reasonable Expectations in the Second Decade' (1976) 12 *FORUM* 275; RE Keeton and A Widiss, *Insurance Law* (West Publishing 1988) 6.01-6.10. For the use of the reasonable expectation

Also, others have noted that courts in these jurisdictions construe ambiguous clauses in insurance contracts against the insurance companies that drafted and often imposed the contracts on policyholders.⁸⁸

With regard to Middle Eastern or Muslim-majority countries such as the KSA, Egypt, Lebanon, Qatar, Syria, Tunisia and United Arab Emirates, some commentators have critically assessed their consumer protection laws.⁸⁹ They have noted that laws of all of these countries, except Lebanon, focus on the quality of goods and services offered to consumers and place little emphasis on the use of unfair or unconscionable terms in consumer transactions.⁹⁰ Thus, only Lebanon specifically prohibits the use of unfair terms in market transactions on the grounds that it is contrary to the *Shariah*. However, many commentators tend to broadly interpret Islamic law concepts such as good faith, general welfare and disclosure as protecting consumers against unfair practices.⁹¹ Thus, they do not identify specific principles or concepts that can be used by Islamic judges to protect consumers in a consistent and predictable manner. It is uncertain whether it is important to develop such specific principles or concepts. It is shown in Chapter 5 that adjudicators in the Primary Committees do not use these concepts but refuse to enforce contractual terms which they believe to be unfair.

It may therefore be stated that the review of the extant literature and IDC case law in the previous chapters played three important roles regarding the design of the qualitative study. First, it documented the need for this study, viz., filling the gap in the literature regarding specific principles that can be used to protect consumers in the Saudi insurance market. Second, it set out the phenomenon that this study explored: adjudication in the IDC. Third, it provided theoretical underpinning for the study. Hence, the researcher sought to determine whether the

doctrine to interpret contracts containing ambiguities in Canada, see O Brand, 'Contract Terms: Judicial Approaches to the Interpretation of Insurance Contracts' in J Burling and K Lazarus (eds), *Research Handbook on International Insurance Law and Regulation* (Edward Elgar 2011) 112-113.

⁸⁸ This is known as the rule of contra proferentem. See EM Holmes and JA Appleman, *Holmes' Appleman on Insurance* (Lexis Law 1996) 6.1; RH Jerry, *Understanding Insurance Law* (2nd edn, LexisNexis 2012) 25A. See also J Stempel, 'Reassessing the Sophisticated Policyholder Defense in Insurance Coverage Litigation' (1993) 42 *Drake Law Review* 807, 810-811.

⁸⁹ See for example, M Fayad, 'A Glance at Unfair Terms in Consumer Transactions in Arab Legal Systems and Islamic Law: What Arab Lawyers Can Learn from the European Experience' (2012) 5(2) *International Journal of Private Law* 200, 200-201, 211-214; K Khan and S Aftab, 'Consumer Protection in Islam: The Case of Pakistan' (2000) 39(4) *Australian Economic Papers* 483, 484-503; MA Khan, *Islamic State and Consumer Protection* (Grin-verlag 2011) 5-8.

⁹⁰ Fayad, *ibid*.

⁹¹ MA Khan, 'Consumer Protection in Islamic Law (*Shariah*): An Overview' (2011) 45(31) *AL-ADWA* 77, 78-93; SM Schwebel, 'The Kingdom of Saudi Arabia and Aramco Arbitrate the Onassis Agreement' (2010) 3(3) *The Journal of World Energy Law and Business* 245, 245-256.

interpretation of insurance contracts by IDC adjudicators generally leads to fair outcomes which in turn explains the high level of satisfaction of IDC users. However, given that the qualitative research methodology adopted for this chapter was phenomenology, the researcher's conclusions are based on the perceptions of IDC adjudicators. Thus, the existing theories identified in the review of literature and court decisions did not shape the researcher's view of the data.

6.2.1 Ethical Issues

Ethical considerations are very important for qualitative studies because such studies intrude in the lives of participants.⁹² Following the design and before the collection of the data, the researcher ensured that the study complied with the relevant ethical standards. In the United Kingdom, the Code of Practice for Research published by the Research Integrity Office⁹³ requires all research that involves human participants, human material or personal data to comply with all legal and ethical requirements, as well as the relevant guidelines. Also, the Office requires all organisations and researchers to set up systems that ensure ethical and regulatory review of projects that involve human participants or personal data. Under such systems, the research projects must be reviewed by the relevant ethics committee and abide by the committee's recommendations following the review.⁹⁴ Also, the organisations and researchers must ensure that the personal data relating human participants remain confidential and secured.

Given that this research involves human participants and personal data, the researcher carefully reviewed and followed the University's regulations. The researcher ensured that it complied with all legal and ethical requirements, as well as the relevant guidelines. The researcher submitted the Ethical Review Form (see Appendix III) through the system set up by the University to ensure ethical and regulatory review of research projects that involve human participants or personal data. The research was therefore reviewed by the Ethics Committee. Also, the researcher ensured that all participants signed a consent form (see Appendix II). The researcher kept the answers provided by the participants confidential and they were only

⁹² See SN Khan, 'Qualitative Research – Phenomenology' (2014) 10(21) *Asian Social Science* 298, 306.

⁹³ This is an advisory body funded by the UK Higher Education Funding Councils, Royal Society and the Department of Health. The Code of Practice for Research was first published in 2009 and seeks to support research organisations and researchers in meeting the highest standards in the conduct of studies. The Code is published on the organisation's website: <<https://ukrio.org/publications/code-of-practice-for-research/>> accessed 14 November 2019.

⁹⁴ Ibid.

identified only by a code number as shown below. The data has always been locked in a secure place and will be destroyed after the researcher has been awarded a PhD.

6.3 Sampling

It is important for qualitative researchers to identify the persons they seek to study. These persons ought to be well informed with regard to the research aim and questions.⁹⁵ In this study, the researcher did not articulate a set of attributes that the participants ought to possess given that the objective was to study adjudicators of the IDC only. Thus, the researcher did not seek to construct a suitable sample of subjects to study. The adjudicators of the IDC who were available and accepted to participate in the study comprised the sample. It may therefore be stated that the sampling strategy used by the researcher was purposive sampling. This is a strategy that is widely used in qualitative research for the selection of persons with a wealth of information related to the phenomenon of interest.⁹⁶ It enables researchers to make effective use of limited resources. In addition to their knowledge, participants are also selected on the bases of availability and willingness to take part in the study, as well as their readiness to communicate opinions and experiences in an articulate and reflective manner.⁹⁷ This sampling strategy also helps towards achieving one of the main goals of qualitative methods, viz., saturation. This involves achieving the depth of understanding by continuing to sample until no new information can be acquired.⁹⁸

There are several purposeful sampling strategies. These include the selection of cases with maximum variation; the selection of extreme (outlier) or deviant cases; the selection of homogenous cases (for group interviewing); and the selection of cases that meet a predetermined criterion of importance.⁹⁹ The researcher used criterion-based purposeful sampling to describe and illustrate what is typical to adjudicators of the IDC. The goal was to narrow the range of variation and focus on the similarities in their decision-making processes: how do they protect consumers or policyholders who are in desperate need of money and are challenging the arbitrary adverse determinations by insurers.

⁹⁵ See HR Bernard, *Research Methods in Anthropology: Qualitative and Quantitative Approaches* (3rd edn, Alta Mira Press 2002) 16-21.

⁹⁶ See MB Miles and AM Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (2nd Sage 1994) 24.

⁹⁷ Ibid.

⁹⁸ See M Mason, 'Sample Size and Saturation in PhD Studies Using Qualitative Interviews' (2010) 11(3) *Forum: Qualitative Social Research* 1, 2.

⁹⁹ MQ Patton, *Qualitative Research and Evaluation Methods* (3rd edn, Sage 2002) 239-240.

The researcher however encountered some difficulties in the use of the purposeful sampling strategy. It was uncertain what was the range of variation in the sample of IDC members or adjudicators from which the researcher took the purposive sample. Hence, the researcher assumed that all IDC members or adjudicators are potential information-rich participants without regard to whether the adjudicators who accepted to participate in the study were actually as knowledgeable as the adjudicators who did not participate in the study. Also, the researcher was unable to use an iterative approach of sampling and re-sampling¹⁰⁰ in order to select a suitable sample of adjudicators who actually possessed a wealth of information. It may be argued that the researcher could have for example selected only adjudicators who had issued more than 100 decisions or served as adjudicators or judges for more than 10 years. However, such criterion would still not ensure that the adjudicators who participated in the study were actually as knowledgeable or even more knowledgeable when compared to adjudicators who did not participate in the study. Nonetheless, since the researcher used the phenomenological approach (as shown below), the researcher did not rely on the sampling to ensure that theoretical saturation occurred,¹⁰¹ but on the theory that emerged from the data.

The size of the sample that was selected was 34 adjudicators or members of the IDC, whether they served as legal advisors or panel members drawn from the insurance industry.¹⁰² A single criterion was used to select a sample of these nominees to include in the study: active IDC members or adjudicators who were available and willing to participate in the study. The researcher sent an email to everyone on a list of IDC members or adjudicators that had been provided by the General Secretariat of the Committees for the Resolution of Insurance Disputes and Violations (General Secretariat). The researcher had previously sent a post mail and called the General Secretariat's head office in Riyadh asking for a list of all IDC members who adjudicate disputes in the three Primary Committees. It is uncertain whether the General Secretariat sought and obtained the consent of the members or adjudicators before including their names and contact details on the list given to the researcher. The General Secretariat neither confirmed nor denied when the researcher asked if it had obtained the consent of the

¹⁰⁰ This involves moving back and forth between the cases that have been selected for data collection and analysing the data as they are collected. Subsequent sampling decisions are then determined by what emerges from the analysis of the data. See MN Marshall, 'Sampling for Qualitative Research' (1996) 13(6) *Family Practice – An International Journal* 522, 523-524.

¹⁰¹ For a thorough discussion on how this can be achieved in qualitative studies, see B Saunders et al, 'Saturation in Qualitative Research: Exploring Its Conceptualization and Operationalization' (2018) 52(4) *Quality and Quantity* 1893, 1893-1905.

¹⁰² It is noted in Chapter 3 that each Primary Committee comprises a panel of three members; a legal advisor is the head of the panel and two other members from the insurance industry who have an accounting and finance background.

potential participants. Nonetheless, the researcher sent emails or called all the members or adjudicators of the IDC on the list.

19 of the 34 adjudicators decided to participate in the study. It may be contended that the sample is broadly representative of IDC adjudicators given that it comprises a majority of the adjudicators. The findings of this study are therefore based on the responses given by 19 IDC male adjudicators using a questionnaire. All the participants voluntarily participated in the study. 8 participants serve as adjudicators at the Riyadh Primary Committee, 6 serve as adjudicators at the Jeddah Primary Committee, 3 serve as adjudicators at the Dammam Primary Committee, and 2 serve as adjudicators at the SAMA Appeal Committee. The findings regarding the participants' background information are as follows:

- Among the 19 participants, 10 responded that they were within the age range of 46-66; while 8 were within the age range of 25-45. Only 1 was above the age of 66 and he served at the SAMA Appeal Committee
- All 19 participants had a bachelor's degree or above; 2 had Doctorate degrees.
- Among the 19 participants, 5 had served as IDC adjudicators for more than 3 years but less than 5 years; and 14 had served for less than 3 years.
- Among the 19 participants, 3 had served as adjudicators for less than 5 years; 11 had served as adjudicators for more than 5 years but less than 10; 4 had served as adjudicators for more than 10 years but less than 15 years; and 1 had served as adjudicator for more than 15 years.
- All 19 participants had experience working as an arbitrator, negotiator or mediator in an insurance-related disputes.
- Among the 19 participants, 1 had served as a judge in an Islamic Court when it handled insurance litigation.

It follows that the pool of IDC adjudicators comprises educated and fairly experienced men. The fact that they all had bachelor's degree or higher may be explained by the requirement that *qadis* who give judgements in Islamic courts should have degrees in *Shariah* law from a recognised Islamic university in the Kingdom.¹⁰³ Some are also required to obtain a post-

¹⁰³ See A Baamir, *Sharia Law in Commercial and Banking Arbitration* (Routledge 2010) 187.

graduate qualification from the Institute of Higher Judiciary.¹⁰⁴ Thus, legal advisors who head the panels of the Primary Committees are also required to have degrees in *Shariah* law. They are assisted by two members who are drawn from the Saudi insurance industry with background in accounting and finance. This ensures that the panels combine legal and insurance expertise. As such, the participants of this study were well versed with the studied phenomenon. This enhanced the dependability and conformability of the findings given that their knowledgeable responses are likely to be true over time and under different conditions, and there is a strong potential for congruence between their responses and those of other adjudicators in the KSA.¹⁰⁵

Also, all the participants had experience working as arbitrator, neighbour or mediator in an insurance-related dispute. This enhances the reliability of their assessment of the IDC as a dispute resolution in comparison to other alternative dispute resolution mechanisms. However, their experience may be explained by the fact that the General Secretariat ensures that disputes are submitted for mediation before going to the relevant Primary Committee. Thus, as members of the IDC, all the participants must have been given the opportunity to act as mediator.

6.4 Data Collection

After the designing the study, ascertaining the appropriate sampling strategy, and ensuring that the study complied with the relevant ethical standards, the researcher began to collect the data. There are generally four types of methods used in collecting data for qualitative research, namely observation, interviews, focus groups and questionnaires.¹⁰⁶ The researcher could not use observation because it involves collecting data by observing the subjects in the field. Thus, it was impractical for the researcher to determine how IDC adjudicators protect consumers or policyholders by observing the 19 adjudicators in different tribunals in Riyadh, Jeddah and Dammam. Proceedings in the IDC last for at least three months. Hence, the researcher could not take the role of participant observer and record information during the proceedings. Moreover, the motivations and decision-making process of IDC adjudicators could not be observed. The researcher did not need to observe the proceedings in order to determine whether an adjudicator thought the parties were satisfied with the outcome.

¹⁰⁴ See FE Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (Brill 2000) 81.

¹⁰⁵ With regard to the trustworthiness of qualitative content analysis based on dependability, credibility, transferability, authenticity and conformability. See S Elo et al, 'Qualitative Content Analysis: A Focus on Trustworthiness' (2014) 4(1) *Sage Open* 1, 1-10.

¹⁰⁶ See J Sutton and Z Austin, 'Qualitative Research: Data Collection, Analysis and Management' (2015) 68(3) *The Canadian Journal of Hospital Pharmacy* 226, 226-231.

The researcher did not use interviews because of the cost implications and logistical challenge of travelling to different cities across the KSA to conduct face-to-face interviews. Although phone interviews are more convenient and cost-effective than face-to-face interviews and they reliable and efficient as regards collecting data,¹⁰⁷ the social expectations of the medium could not be overlooked. From personal experience, the researcher believed that in the KSA conversations over the phone are generally deemed to be social or trivial. Also, interviewing elderly persons and senior public servants such as judges can be challenging because they are often task oriented as regards using phones. Then those without a reliable connection would be excluded from the process,¹⁰⁸ and even where the connection is reliable, fatigue and inattention may subsequently impact on the quality of the responses after about thirty or forty-five minutes. It would have been very difficult for the researcher to keep the conversation short and task focused over more than one hour. Moreover, the respondents were less likely to provide detailed information over the phone during the short time scheduled for the interviews.

It was also not possible for the researcher to use a focus group given that the researcher could not unite all IDC adjudicators in order to conduct a group interview. Some of the adjudicators serve in Primary Committee in Riyadh while others serve in the Primary Committee is Dammam and others served at the Primary Committee in Jeddah.

6.4.1 The Use of the Questionnaire

The researcher used the questionnaire to collect qualitative data. The researcher did not have to rely on his verbal communication skills and strong probes to keep the conversation on track. Also, the researcher did not have to find a boardroom or private space with little or no background noise. The respondents were able to complete the questionnaires diligently in the calm of their offices or home. This was very important because some of the questions required the participants to explain their opinions or viewpoints. They had the opportunity to read up on the relevant issues to refresh their memories before responding to the questions. This would not have been possible if the researcher had used the face-to-face or telephone interviews. It would have been unrealistic to expect that the respondents would remember accurate details

¹⁰⁷ For an assessment of telephone and face-to-face interviews, see JE Sturges and KJ Harahan, 'Comparing Telephone and Face-to-Face Qualitative Interviewing: A Research Note' (2004) 4 *Qualitative Research* 107, 107-118; K Musselwhite et al, 'The Telephone Interview is an Effective Method of Data Collection in Clinical Nursing Research: A Discussion Paper' (2007) 44 *International Journal of Nursing Studies* 1064, 1064-1068.

¹⁰⁸ This is a major shortcoming of telephone interviews, see K Wilson et al, 'Telephone or Face-to-Face Interviews? A Decision Made on the Basis of a Pilot Study' (1998) 35 *International Journal of Nursing Studies* 314, 317.

about the shortcomings of the Board of Grievances or the IDC as regards settling insurance disputes (Question number 12, Appendix II) or concerns consumers or policyholders may have expressed to him or his clerk (Question number 24, Appendix II). Nonetheless, the fact that the participants had to type or write their answers limited the amount of information they could provide.

The questionnaire (see Appendix II) was delivered to participants in an electronic format via email. It was accompanied by instructions. In order to ensure better sample coverage and minimise coverage error, the Internet-delivered questionnaire was sent to all 34 individuals in the Saudi population who had a chance of inclusion in the sample. These individuals included all those in the list of IDC members or adjudicators submitted by the General Secretariat. The use of the Internet-delivered questionnaire was low cost and practical for all potential participants.¹⁰⁹ The electronic questionnaire also helped to reduce measurement error and ensure a better response rate.¹¹⁰

The questionnaire was designed with the objective of asking research questions in a neutral and objective manner. The original version of the questionnaire was in Arabic. The questions were drafted in such manner that they were easily understood, interpreted and answered. This therefore increased the accuracy of answers. All the answers were also in Arabic. Despite having 26 questions, the questionnaire was not unreasonably long given that nine questions focused on the participant's background information. The questionnaire therefore began with simple factual questions, then proceeded to open and attitudinal questions requiring deeper concentration. Hence, the likelihood of the participants skimming through the questions or misinterpreting complex questions was low.¹¹¹ It must be noted that the motivation felt by the participants may affect the extent to which they concentrate in completing the questionnaire.¹¹² Participants who are convinced that they or their employers or society will benefit from the outcome of the study are generally more motivated to complete questionnaire.¹¹³ This explains why in the information sheet attached to the Questionnaire (see Appendix II), the researcher emphasised the importance of studying the perception of the IDC as a dispute resolution option

¹⁰⁹ See DA Dillman et al, *Internet, Phone, Mail, and Mixed-Mode Surveys: The Tailored Design Method* (John Wiley & Sons 2014) 14.

¹¹⁰ See J Ponto, 'Understanding and Evaluating Survey Research' (2015) 6(2) *Journal of the Advanced Practitioner in Oncology* 168, 168-170.

¹¹¹ For guidance on the length of questionnaires, see A Adams and AL Cox, 'Questionnaires, In-depth Interviews and Focus Groups' in P Cairns and A Cox (eds), *Research Methods for Human Computer Interaction* (Cambridge University Press 2008) 19-20.

¹¹² Ibid.

¹¹³ Ibid.

regarding disputes involving consumers. As shown below, some of the participants agreed that it is important to inform the Saudi government about the strengths and weaknesses of the IDC and proposed ways in which this dispute resolution option can be enhanced.

The researcher carefully reviewed the sequence of the questions when the questionnaire was structured. This was geared towards increasing the usability of the questionnaire. Thus, questions were grouped under three common themed headings to enable the participants to contextualise each question. The order of the questions was aimed at biasing the participants to give more information and not to give more favourable answers. The first nine questions were biographical and required very short answers or entering checks or marks as responses. Within these sections, ranges were used for questions on the respondents' ages and number of years of experience. This was deemed to be less invasive than requiring the respondents to state their ages. The researcher also ensured that each question would have the same meaning for every participant. The frame of reference was clear: Saudi insurance law. The information to the participants attached to the questionnaire contextualised the questions. Nonetheless, the questions were kept short and simple in order to increase the likelihood that the participants understood them and provided accurate answers. There was no question requiring the participants to interpret the terms or concepts used by the researcher. Also, leading questions were avoided, and emphasis was placed on questions about the participants' opinions. In the same vein, questions that invite socially desirable responses were avoided.¹¹⁴ Examples of such questions are those that require the participants to express support or disapproval of a verse in the Quran or to criticise a policy endorsed by the monarch. The researcher did not want to relay any biases or incite some of the participants to provide a biased set of responses. Although the participants were encouraged to answer the questionnaire based on their own experience, they were also asked to make their own personal interpretations.

6.5 Data Analysis

In order to prepare the data for analysis, the data was organised into file folders, with one document for each of the 19 adjudicators who participated in the study. Each document contained over 11 pages of data. Thus, the researcher organised a total of 209 pages in file folders. The researcher examined the data three times. The repeated examination enabled the researcher to have a general sense of the theories and themes that emerged from the data.

¹¹⁴ See A Edwards, 'The Relationship between the Judged Desirability of a Trait and the Probability that the Trait will be Endorsed' (1953) 37(2) *Journal of Applied Psychology* 90, 90-93.

In order to validate the accuracy of the results, the researcher had to eliminate or minimise the effect of researcher bias.¹¹⁵ This may occur whenever there is an influence that distorts the findings of the study.¹¹⁶ This may be where the method used to collect or analyse the data is too closely aligned with the researcher's personal agenda. Thus, the researcher did not analyse the data in a way that affirmed his own perceptions because he was able to recognise and control his biases through critical self-reflection.¹¹⁷ This allowed the data to determine the results. It has been shown that where self-reflection is explanatory, it can result in less bias.¹¹⁸ Self-reflection is explanatory when a person contemplates why he or she has certain traits or proclivity. Hence, the researcher contemplated why he was empathetic, benevolent and rational. Also, it has been shown that accountability manipulations may enhance self-reflection as a bias mitigation tool.¹¹⁹ Thus, given that the researcher is expected to justify his work to expert supervisors and examiners, the researcher was compelled to engage in pre-emptive self-criticism in order to ensure that he does not present distorted findings to the experts who will assess his work.

After mitigating bias, the researcher had to ensure that all the people and events (adjudicators and their court-room experiences discussed in the questionnaires) are described accurately in order to enhance the descriptive validity of the findings. The researcher could not use investigator triangulation¹²⁰ to enhance descriptive validity because the researcher conducted the study alone. There were no co-researchers available to observe or examine the participants' responses in order to cross-check observations for the purposes of determining whether there was consensus on critical aspects of the participants' responses. Thus, the researcher had to examine the data several times and ensure that descriptions in the questionnaires corresponded to descriptions in the analysis.

Closely related to the descriptive validity concern was the internal validity concern. This arises where the researcher does not justify a cause and effect relationship that is identified in the

¹¹⁵ See JM Morse et al, 'Verification Strategies for Establishing Reliability and Validity in Qualitative Research' (2002) 1 *International Journal of Qualitative Methods* 13, 14.

¹¹⁶ See JS Gardenier and DB Resnik, 'The Misuse of Statistics: Concepts, Tools, and a Research Agenda' (2002) 9(2) *Accounting Research* 65, 65-73.

¹¹⁷ See C Sedikides et al, 'The Why's the Limit: Curtailing Self-Enhancement with Explanatory Introspection' (2007) 75(4) *Journal of Personality* 783, 783-823.

¹¹⁸ See SC Karpen, 'The Social Psychology of Biased Self-Assessment' (2018) 82(5) *American Journal of Pharmaceutical Education* 6299, 6299.

¹¹⁹ Ibid.

¹²⁰ For a detailed discussion of investigator triangulation, see MM Archibald, 'Investigator Triangulation: A Collaborative Strategy with Potential for Mixed Methods Research' (2016) 10(3) *Journal of Mixed Methods Research* 228, 228-250.

findings.¹²¹ Internal validity may also be fostered through investigator triangulation. However, as noted above, this method was not available to the researcher. Also, the researcher could not rely on methods triangulation given that only one method was used to collect the data, viz., questionnaire. Nonetheless, the researcher used data triangulation by comparing and analysing data collected from the 19 participants. Given that this constitutes the majority of IDC adjudicators (the target population), external validity did not pose a challenge as internal validity. Thus, the findings of this study may be generalised to all IDC adjudicators in the three Primary Committees and SAMA Appeal Committee. The researcher is confident that this study accurately identifies the practices common to IDC adjudicators who seek to protect consumers or policyholders in insurance coverage disputes.

6.5.1 The Phenomenological Approach

There are generally four qualitative research methodologies, namely case study, grounded theory, ethnography and phenomenology.¹²² The researcher did not use the case study method because it is not suitable to determine cause and effect and discover generalisable truths,¹²³ which are among the main objectives of this empirical inquiry. Also, the researcher sought to obtain data from all IDC adjudicators, not narrowly focus on a few.

Although the researcher sought to identify and analyse theories and themes that emerged from the data, the researcher did not adopt the grounded theory methodology because it emphasises inductive analyses.¹²⁴ However, deduction is the form of analytic thinking that was employed by the researcher. In other words, as shown below, the analysis moved from the general to the particular. The researcher established a theory following the doctrinal analyses (shown in Chapters 3 and 4) and the practical inquiry (shown in Chapter 5) and empirical data was then collected to test this theory. This is how the researcher answered the research question related to the satisfaction of consumers with their satisfaction with the outcomes of IDC hearings. As noted above, data was gathered using a questionnaire with 19 subjects.

The researcher did not conduct an ethnographic study because cost and logistical challenges prevented the researcher from living within the Riyadh, Dammam and Jeddah communities of

¹²¹ See N Golafshani, 'Understanding Reliability and Validity in Qualitative Research' (2003) 8(4) *The Qualitative Report* 597, 599-600.

¹²² See PK Astalin, 'Qualitative Research Designs: A Conceptual Framework' (2013) 2(1) *International Journal of Social Sciences and Interdisciplinary Research* 118, 119.

¹²³ See RE Stake, 'The Case Study Method in Social Inquiry' (1978) 7(2) *Educational Researcher* 5, 5-8.

¹²⁴ BG Glaser and AL Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Aldine 1967) 2-6; MH Schwartz et al, *What the Best Law Teachers Do* (Harvard University Press 2013) 4-12.

the IDC adjudicators studied.¹²⁵ Also, participating in the decision-making process in the Committees was not a plausible option.

Creswell advised that where a research problem requires in-depth understanding of human experiences common to a defined group of people, phenomenology is the best qualitative research method to use.¹²⁶ Thus, it was deemed to be the most appropriate method by the researcher because the research problem required a profound understanding of the experiences common to IDC adjudicators and their motivations in assessing the law and facts and arriving at conclusions. Padilla-Diaz notes that the role of the phenomenological researcher is to build the studied object according to its own manifestations and components.¹²⁷ As such, the researcher delved into the experiences, perceptions and perspectives of IDC adjudicators and used these elements to construct a theory regarding how consumers are satisfied with the IDC because adjudicators issue fair decisions.

Creswell also noted that members of the group of people that is studied should be able to articulate their lived experiences; and the experiences should not be diverse.¹²⁸ Given that IDC adjudicators are jurists or persons with expertise in finance and accounting, it was assumed that they are able to articulate their lived experiences. Also, their experiences as IDC adjudicators cannot be diverse since they resolve similar disputes. The comparability of their experiences enabled the researcher to identify common meanings and underlying essences that were then attributed to all IDC adjudicators. The fact that it was important for the participants to have comparable experiences explains why the suitable sampling strategy was purposeful sampling. As noted above, purposeful sampling incorporates specific criteria that must be met by all potential participants at the time of selection. Hence, only persons who served as IDC members or adjudicators in the Primary Committees and SAMA Appeal Committee could be selected.

The analysis of data in a phenomenological study involves three things: identifying common meanings and essences; horizontalization of the data; and textual and structural analysis of the data.¹²⁹

¹²⁵ Regarding the challenges confronted by ethnographic researchers, see M Hammersly, 'Ethnography: Problems and Prospects' (2006) 1(1) *Ethnography and Education* 3, 3-14.

¹²⁶ JW Creswell, *Research Design: Qualitative, Quantitative and Mixed Approaches* (Sage 2009) 33.

¹²⁷ M Padilla-Diaz, 'Phenomenology in Educational Qualitative Research: Philosophy as Science or Philosophical Science?' (2015) 1(2) *International Journal of Education Excellence* 101, 104.

¹²⁸ JW Creswell (n 45) 33.

¹²⁹ See Padilla-Diaz (n 46) 104.

6.5.1.1 Identifying Common Meanings and Essences

The researcher began by describing his own perception of the IDC (Chapters 3, 4 and 5) in order to distinguish them from the participants' perception. Welman and Kruger noted that 'the phenomenologists are concerned with understanding social and psychological phenomena from the perspectives of people involved.'¹³⁰ Thus, a researcher applying phenomenology is concerned with the lived experiences of participants, what they did or refrained from doing in order to achieve stated objectives. Van den Berg (translated by Van Manen) summarised the task as follows:

[Phenomena] have something to say to us – this is common knowledge among poets and painters. Therefore, poets and painters are born phenomenologists. Or rather, we are all born phenomenologists; the poets and painters among us, however, understand very well their task of sharing, by means of word and image, their insights with others – an art.¹³¹

Bentz and Shapiro¹³² and Kensit¹³³ also noted that the phenomenological investigator must identify the theory that emerges from the data. Kensit observed that '[d]oing phenomenology' means capturing rich descriptions of phenomena and their settings.' As such, in order to capture the rich descriptions of the participants based on their own experiences, some of the questions put to the participants in this study included (see Appendix II):

- What is your opinion of the IDC as a dispute resolution body?
- What is your opinion of the Board of Grievances as an insurance dispute resolution body?
- What is your opinion of arbitration, negotiation and mediation as insurance dispute resolution options?
- Do you oppose or support the requirement to submit all insurance-related disputes to the IDC?

¹³⁰ JC Welman and SJ Kruger, *Research Methodology for the Business and Administrative Sciences* (International Thompson 1999) 196.

¹³¹ M Van Manen, 'Phenomenological Pedagogy and the Question of Meaning' in D Vandenberg (ed), *Phenomenology and Education Discourse* (Heinemann 1997) 41.

¹³² VM Bentz and JJ Shapiro, *Mindful Equity in Social Research* (Sage 1998) 104.

¹³³ DA Kensit, 'Rogerian Theory: A Critique of the Effectiveness of Pure Client-Centred Therapy' (2000) 13(4) *Counselling Psychology Quarterly* 245, 235-341.

- Do you think most consumers are satisfied with their experience with the IDC? Why?

The above questions were directed to the participants' experiences, perceptions, viewpoints and convictions about the IDC. Conducting research from the participants' perspective may be referred to as bracketing.¹³⁴ The respondents were asked to articulate their experiences about adjudication by the IDC, Board of Grievances, mediators, negotiators and arbitrators; and then share their reflection on the value of the experiences. The researcher was also able to bracket his own preconceptions and enter into the respondents' lifeworld in order to analyse the responses as an objective interpreter.¹³⁵ Bracketing is related to the Greek concept 'epoche' which is used to describe the process of identifying common meanings and essences in phenomenological studies.¹³⁶ Epoche refers to the suspension of judgments or pre-conceptions by the researcher in order to delve into the perceptions and perspectives of the participants.¹³⁷ In other words, the researcher excludes his own meanings, perceptions and interpretations and enters into the participant's unique world. This ensures the objectivity of the analysis of the data that is collected.

6.5.1.2 Horizontalization of the Data

This step involved listing each of the relevant ideas and themes that emerged from the data. The ideas and themes were given equal value regarding the expressions of the participants. Thus, the researcher extracted and isolated expressions that illuminated the researched phenomenon. The list of the expressions extracted from the responses was scrutinised and redundant expressions were deleted from the list. This explains why the responses of some participants are provided below, while the responses of other participants are not provided. The importance of the ideas or meanings in the expressions was determined by the number of times an idea or meaning was mentioned by the participants. With the list of units of expressions, the researcher elicited the meaning of the expressions from a holistic perspective.

The researcher was then able to form clusters of themes by grouping the units of expressions and their meanings together. A summary of all the themes that emerged from the data (non-redundant units) provides a holistic perspective. The researcher also identified themes that were

¹³⁴ For a general discussion of bracketing and its phenomenological origins, see L Tufford and P Newman, 'Bracketing in Qualitative Research' (2010) 11(1) *Qualitative Social Work* 80, 80-96.

¹³⁵ For analysis of bracketing in phenomenological investigations, see WL Miller and BF Crabtree, 'Primary Care Research: A Multimethod Typology and Qualitative Road Map' in BF Crabtree and WL Miller (eds), *Doing Qualitative Research: Research Methods for Primary Care* (Sage 1992) 124.

¹³⁶ Q Lauer, *Phenomenology: Its Genesis and Prospects* (Harper 1958) 49-50.

¹³⁷ Ibid.

common to most or all of the responses, as well as variations. What is important here is succinctly captured in the following statement:

Whatever the method used for a phenomenological analysis, the aim of the investigator is the reconstruction of the inner world of experience of the subject. Each individual has his own way of experiencing temporality, spatiality, materiality, but each of these coordinates must be understood in relation to the others and to the total inner world.¹³⁸

The researcher therefore captured the perceptions of the participants, which constitute their 'inner world of experience.' He then compared and contrasted each participant's way of experiencing the IDC and drew conclusions regarding the phenomenon studied: adjudication in the IDC. Sadala and Adorno noted that the phenomenological investigator 'transforms participants' everyday expressions into expressions appropriate to the scientific discourse supporting the research.'¹³⁹ Also, Coffey and Atkinson stated that the researcher does not simply present rigorous data but he also develops ideas and theories from the data.¹⁴⁰ Hence, the most appropriate way of developing the ideas and theories is by transforming the non-redundant expressions of the participants into scientific discourse. This is what the researcher achieved via the textual and interpretative analysis of the data.

6.5.1.3 The Textual and Interpretative Analysis

The textual analysis involved describing the participants' perceptions and viewpoints, while the interpretative analysis involved interpreting the participants' feelings, perceptions and viewpoints. As noted above, the horizontalization of the data involved transforming the participants' expressions into expressions appropriate to the scientific discourse. What the researcher did to achieve this was group units of expressions by different participants to form clusters of themes and then identify the ideas or theories that emerge from these themes which represent a holistic perspective. It follows that the textual and interpretative analysis involved linking different expressions in order to ascertain a common and distinct perspective on the effectiveness of the IDC as a dispute resolution body with regard to the protection provided to consumers or policyholders. Thus, the textual and interpretative analysis essentially involved

¹³⁸ RH Hycner, 'Some Guidelines for the Phenomenological Analysis of Interview Data' in A Bryman and RG Burgess (eds), *Qualitative Research* (Vol 3, Sage 1999) 153-154.

¹³⁹ MLA Sadala and RCF de Adorno, 'Phenomenology as a Method to Investigate the Experiences Lived: A Perspective from Husserl and Merleau-Ponty's Thought' (2001) 37(3) *Journal of Advanced Nursing* 282, 289.

¹⁴⁰ A Coffey and P Atkinson, *Making Sense of Qualitative Data: Complementary Research Strategies* (Sage 1996) 139.

analysing discourse. This was done using the discourse analytic method as shown in the next section.

6.5.2 The Discourse Analytic Method

This method was developed in sociology and social psychology to ascertain a given social reality from the meaning of language.¹⁴¹ The researcher using the method is able to identify common meanings within the defined context. It must be noted that the term ‘discourse’ may be ascertained in a range of forms. This study limits the term to perspectives and ideas.¹⁴² Emphasis was placed on verbal discourse in written form because this was the medium used by the participants to produce and transmit meaning to the researcher.¹⁴³ The researcher sought to ascertain the perceptions of IDC adjudicators in order to explain the satisfaction of IDC users (specifically policyholders) despite the flaws in the laws governing adjudication in the IDC. It was assumed that the IDC adjudicators are in the best position to assess the benefits perceived by the policyholders and the implementation of the laws governing adjudication in the IDC.

The analysis was conducted at the textual and interpretative level. Thus, discourse was considered to be information, persuasion or a social product. The ultimate objective of the analysis was to interpret the discourse and ascertain the information conveyed by the participant or determine his persuasion. It follows that there are consistent language units or expressions that can be identified from the information conveyed by participants. These units comprise the ‘interpretative repertoire’.¹⁴⁴ As such, the respondent is not the basic analytic unit because the researcher’s objective is to identify and analyse the interpretive repertoire. Wetherell and Porter explained as follows:

Repertoires could be seen as building blocks speakers use for constructing versions of actions, cognitive processes, and other phenomena. Any particular repertoire is constructed out of a restricted range of terms used in a specific stylistic and grammatical fashion. Commonly, these terms are derived from one

¹⁴¹ See C Hardy et al, ‘Discourse Analysis and Content Analysis: Two Solitudes?’ (2004) *Qualitative Methods* 19, 19-20; YM Herrera and BF Braumoeller, ‘Symposium: Discourse and Content Analysis’ (2004) *Qualitative Methods* 15, 15-18; BD Hodges et al, ‘Qualitative Research: Discourse Analysis’ (2008) 337(7669) *British Medical Journal* 570, 570-572.

¹⁴² See B Frohmann, ‘Discourse Analysis as a Research Method in Library and Information Science’ (1994) 16 *Library and Information Science Research* 119, 120.

¹⁴³ For a distinction between verbal discourse and other forms of discourse that can be analysed such as visual, harmonic and spatial discourse, see JR Ruiz, ‘Sociological Discourse Analysis: Methods and Logic’ (2009) 10(2) *Forum: Qualitative Social Research* 1, 2-5.

¹⁴⁴ See M Wetherell and J Porter, ‘Discourse Analysis and the Identification of Interpretive Repertoires’ in C Antaki (ed), *Analysing Everyday Explanation: A Casebook of Methods* (Sage 1988) 171.

or more key metaphors and the presence of a repertoire will often be signalled by certain tropes or figures of speech.¹⁴⁵

The researcher therefore built the interpretative repertoire by identifying terms or expressions that were consistently used by the participants to describe the phenomenon studied. In other words, the responses provided by the IDC adjudicators were systematised and the researcher was then able to ascertain a common perspective on the effectiveness of the IDC and the satisfaction of policyholders who have submitted claims to the IDC. The discourse analysis was conducted in three steps, namely the textual analysis; the identification of the interpretative repertoire; and linking the interpretative repertoire to the research question or theory that was being tested.

As noted above, the textual analysis involved determining the structure of the discourse. The researcher sought to ensure that the analysis was not limited to a reduced version of the discourse but rather to all non-redundant expressions of the participants. The researcher was able to achieve this because of the horizontalization of the data prior to the analysis. Thus, the responses of the participants were fragmented into pertinent clusters of themes and then categorised. Responses that were similar were placed under the same category. As shown in Appendix II, the questionnaire was divided into three sections, namely the participants' background information; their experience with the IDC; and their perceptions about the experiences of IDC users, specifically consumers or policyholders. This facilitated the process of categorising the responses.

6.5.2.1 Participants' Statements and Clusters of Themes

The participants were asked specific questions regarding adjudication in the IDC and the satisfaction of policyholders in disputes resolved by the IDC. As noted above, the objective was to explain the satisfaction of IDC users (specifically policyholders). The questions were divided into two broad categories, viz. the participants' experience with the IDC; and the participants' thoughts on the experience of the parties.

6.5.2.1.1 Participants' Experience with the IDC

The participants were asked to state and explain their opinion of the IDC as a dispute resolution body (Question number 10, Appendix II). Of the 19 participants, 16 indicated that they had a very positive opinion about the IDC while 3 indicated that they had a positive opinion about

¹⁴⁵ Ibid, 172.

the IDC. The participants who indicated that they had a very positive opinion explained this opinion as follows:

Participant 1:

We provide an alternative means for the amicable resolution of disputes. This does not avail the parties of their right to seek other amicable options. It is a better alternative because we apply the Shariah in a faster and more flexible way than the courts.

Participant 2:

The Committees are implementing regulations in the Kingdom that protect policyholders and insurance companies. Policyholders cannot be abused as it was in the past. They bring their claims to the Committees and they are treated equally. Insurance companies have resources, but they had to wait for one or two years before courts could issue judgments. Now, it is very fast.

Participant 3:

The insured are given the opportunity to act quickly and receive compensation in a timely manner. They do not have to attend many sessions over many months or years to receive compensation. This system was created to protect insurers and punish wrongdoers who take money under insurance agreements but then refuse to pay when something bad happens to the insured.

Participant 8:

The panel has an obligation to protect members who have contributed to a system which must protect them against loss. This is the best way of compelling the insurance companies to pay these members. The courts are slow and backlogged. Arbitration is expensive and insurance companies don't take mediation seriously.

Participant 14:

Claimants do not pay lawyers' fees and will get a decision in a matter of a few months. We decide what is fair for the parties and direct insurance companies on how to pay compensation

in a manner that is pleasing for all. If they have a good case, they receive a quick decision and their lives are not disrupted.

The participants who indicated that they had a positive opinion about the IDC responded as follows:

Participant 6:

This is one of the targets of the Vision 2030. The insurance industry suffered in the past because the courts could not handle many customer complaints. Now insurance companies know these complaints are handled swiftly and they must compensate customers in time.

Participant 9:

This is a very good system because anyone with a good cause to believe the insurance company is refusing to settle a claim finds justice. This is a very fair system because we enforce agreements and also enforce Islamic law.

Participant 12:

The cost is minimal for the insured. The resolution of the dispute is swift. The insured receives fair compensation for the contributions he has made to the insurance company. Dishonesty is punished in a swift manner.

It is uncertain what motivated 3 participants to indicate that they had a positive opinion rather than a very positive opinion as the other 16 participants. This is because their explanations are similar. Given that the researcher employed the discourse analytic method, the responses of the participants may be said to be contextual and reflexive. This means that the participants communicated an evaluation of the IDC within the context of their respective Committees. The version may be interpreted as indicating that the IDC is an effective dispute resolution option because it is cost-effective and renders fair decisions in a timely manner and in accordance with the principles of the Sharia. This explains the use of terms such as ‘treated equally’, ‘fair’, ‘swift’, ‘cost’ and ‘*Shariah*’. These terms that are highlighted and underlined in the quotes above constituted the interpretative repertoire and were also categorised as themes.

Despite the positive and very positive opinion of the IDC, the participants were not critical of the Board of Grievances. They were asked to indicate and explain their opinion about the Board

of Grievances as an insurance dispute resolution body (Questions number 12 and 13). Among the 2 adjudicators of the SAMA Appeal Committee, Participant 9 noted that the IDC should be compared to the summary court rather than the Board of Grievances, and Participant 12 stated that the Board of Grievances performs similar functions as the SAMA Appeal Committee but the Board has more experienced and better trained judges than the IDC.

The reluctance to criticise the Board, which was the first form of administrative tribunal created in the KSA, may be explained by the fact that the Board of Grievance remains a very influential institution in the Kingdom and may still hear appeals from the Primary Committees as shown in Chapter 3. However, the researcher had expected the participants to discuss the fact that the Board declined to adjudicate disputes based on conventional insurance contracts on the grounds that such contracts violated the *Shariah*.¹⁴⁶ Hence, it is uncertain whether the IDC marks an improvement upon the Board from the participants' standpoint.¹⁴⁷ Also, the participants did not discuss why the settlement of insurance disputes by the Board was deemed unsatisfactory to the point of creating an administrative tribunal separate from the Board to settle these disputes.¹⁴⁸

The participants were also asked to state and explain their opinion about other forms of alternative dispute resolution, namely arbitration, negotiation and mediation (Questions number 14 and 15). The participants responded as follows:

Participant 1:

*Arbitration laws mainly target foreign investors. The arbitration law took into account many practical considerations, but the regime is very **complex** and **expensive** for the local insured with few resources. Negotiation and mediation are good options, but the weaker parties are not comfortable sitting with big insurance companies across the table.*

Participant 3:

*Alternative resolution options are good. but they do not work for **poor** people. In insurance, the dispute must be resolved quickly. Arbitration can take many months or even **years**.*

¹⁴⁶ See especially Appeal No. 3/T/141 of Year 1407H (the Board declined to hear the dispute despite a recommendation by the Governor that the Board should make a judgment about the disputed matter).

¹⁴⁷ See also Appeal No. 1228/AS/6 of Year 1431H; Appeal No. S/23973 of Year 1436; Appeal No. S/2/324 of Year 1432H (the Board of Grievances held that a contract was void because it contained elements of *riba* and *gharar*).

¹⁴⁸ In Appeal No. Q/7138 of Year 1432H, the Board of Grievances declined to hear an insurance dispute on the grounds that the IDC is the competent authority to hear such disputes.

Mediation is unreliable. The poor person does not know whether the insurance company will obey the mediator.

Participant 4:

Mediation is voluntary. Arbitration is voluntary. There are many centres that handle these. However, they have not been successful with insurance claims. They have procedures and rules that many people think are complex.

Participant 8:

When we receive cases, it is because negotiators and mediators have failed, and the parties do not want to go arbitration. If these options were good, we would not be receiving so many cases.

Participant 12:

Most people are devout Muslims. They want to enter into agreements and settle disputes according to the laws laid down by the Great Prophet (peace be upon him). Arbitration can be done according to a foreign law. Negotiators may not be trained Shariah judges or advisors.

The participants communicated an evaluation of ADR options within the context of the Saudi insurance market. The version communicated may be interpreted as indicating that the ADR options are not effective in the KSA because they are ‘complex’, ‘expensive’, protracted, and ‘unreliable’. This assessment may be contrasted with the doctrinal analysis in Chapter 4 which concluded that ADR options emphasise speed, efficiency, simplicity and cost-effectiveness. Thus, there is a disconnect between an independent investigator’s analysis of the ADR options and the assessment by persons who are part of the system. The perception of the IDC adjudicators is that policyholders are not satisfied with the ADR options because they are inaccessible to persons with few resources due to huge costs and delays. Also, they do not apply the *Shariah*. However, in Chapter 4, it was noted that the shortcomings of negotiation and mediation are related to the absence of clear procedural guidelines,¹⁴⁹ while arbitration is a commendable dispute resolution option, but insurers may impose arbitrators on policyholders through contracts of adhesion.

It is therefore unsurprising that 16 of the 19 participants indicated that they strongly support the requirement to submit all insurance-related disputes to the IDC (Question number 16). 3

¹⁴⁹ As noted in Chapters 4 and 5, parties who submit disputes to the IDC are required to seek mediation first.

participants indicated that they moderately supported the requirement and explained their choice (Question number 17) by stating the importance of ‘choice’ and the respect for ‘party autonomy’.¹⁵⁰ Participant 9 made the following pertinent remark:

*All these options are important means of settling disputes, even the courts. But the disputes concern agreements that the parties freely enter. They must also be free to **choose** the arbiter and place and even the law. This is called **party autonomy**. This freedom is recognised under **Islamic law** unless the agreement has haram elements.*

The participants were also asked whether there is any hierarchy or priority of sources of law when applying precedent (Question number 18). The objective was to determine whether the Committees observe the doctrine of precedent in practice. In Chapter 3, it was noted that in accordance with the CICCL, the Committees have the ability to create precedent through the publication of their decisions. 15 IDC decisions are published on the General Secretariat’s website and all 15 cases are analysed in Chapter 5. The doctrinal analysis then concluded that by publishing the Committees’ opinions, even if anonymised, the public is enlightened on what the law is and how it is applied in practice; and predictability is enhanced.

However, the 19 participants noted that they are required to apply the *Shariah* or Islamic law first and then the relevant legislation and regulations. In fact, 8 of the 19 participants simply wrote Islamic law or *Shariah*. As such, in practice, the doctrine of precedent does not seem to have taken hold. The IDC adjudicators did not think about previous decisions when asked about any hierarchy or priority of sources of law. This once again demonstrates the disconnect between the doctrinal analysis and the perception of persons who are part of the system. The doctrinal analysis concluded that the use of precedent is an important advantage of the IDC. However, the empirical inquiry reveals that adjudicators do not even consider precedent when discussing the sources of law.¹⁵¹

The question about precedent is closely related to that about whether there is a requirement to provide a well-reasoned explanation of the law applied and demonstrate the route taken to reach conclusions (Question number 19). The participants contended that this was so obvious as to need express requirement. They stated as follows:

¹⁵⁰ The IDC has recognised the freedom of parties to execute their agreement. In Case No. 250036, the Primary Committee recognised and enforced an agreement between the policyholder and insurer on an indemnity payment, although the policyholder agreed only because he was in desperate need of money.

¹⁵¹ This is consistent with the fact that the researcher was able to obtain 102 decisions of the Committees and Board of Grievances, and none of the decisions relied on or even cited precedent.

Participant 3:

When you grant a decision, you must also explain the process of making that decision. That is the only way that the parties will understand your decision. If your decision is not well-reasoned, then it is not a good decision.

Participant 11:

Judges have always explained their conclusions. Even mediators and negotiators explain their conclusions. They show how it is related to the Shariah and how it is related to the decree that they are applying. It has always been the practice.

Participant 15:

Yes, there is a requirement. It is a requirement for all judges in all courts. We must provide a well-reasoned explanation of the facts and the law and we must show the parties why one party's argument is strong and the other is weak.

Participant 16:

The Quran wants us to be fair. We must judge everyone according to what is fair and good, and we must show them – explain to them so that they can understand, and everyone can understand. That is what we do as judges.

It is noted in Chapter 3 that the requirement that a tribunal provides the reasons supporting its decision coincides with the policy reasons for making tribunal decisions public and assist in the development of precedent. The absence of such a requirement makes it difficult for an aggrieved party to challenge the decision on appeal, to the extent such an appeal is even permissible, or otherwise pursue judicial review of any alleged impropriety within the proceedings. The perception of the participants is that there is no need for an express requirement given that this is the essence of judging. Thus, judges and panels have 'always' 'explained' or 'shown' how their decision is 'fair' and conforms to the '*Shariah*'.

However, it is noted in Chapter 3 that Article 180 of the Law of Procedure requires the objection brief (application for appeal) to contain the grounds for the objection, the requests of the objector, and the reasons in support of the objection. In other words, the appellant must specifically plead the reason they believe the Primary Committee erred in rendering its judgment and make a claim for the relief sought. It was then noted that what is noticeably absent from the Law of Procedure is any clear delineation of the grounds for objection and

appeal. In the decisions of the Committees published by the General Secretariat, the adjudicators do not provide a well-reasoned explanation of the law applied and demonstrate the route taken to reach their conclusions. They briefly discuss the facts and state their decisions. As such, there is once again a disconnect between the doctrinal analysis and the perception of the actors in the system. The doctrinal analysis concluded that there is no guidance on how the Committees should clearly inform the parties as to the grounds on which they can appeal a decision. However, the IDC adjudicators contend that they always provide a well-reasoned explanation.

The participants were also asked whether there is any guidance or timeframe within which the case must be concluded (Question Number 20). The participants responded as follows:

Participant 1:

We do not have the same formalities as courts. We decide cases after a few months. It may take up to seven months where the evidence is complex, but it is usually a matter of a few months.

Participant 3:

The flexibility of the Committee allows for swift decisions. Cases are concluded here much faster than in ordinary courts because the rules are simple, and parties do not even need lawyers to defend their interests.

Participant 10:

There is no guidance or timeframe unless after the decision has been granted. Then the parties have a timeframe for filing an appeal. Committees make decisions in a quick but fair manner. That is why the Committees were created.

Participant 14:

Parties have enough time to present evidence and arguments. Then we examine the evidence and the arguments and decide. This usually happens in three months. It may take a longer time, but it is always very short compared to courts or arbitration.

The participants therefore communicated that there is no guidance or timeframe within which cases must be concluded. However, they noted that they provide faster resolutions to disputes

when compared to ordinary courts because of ‘simple’ or informal and ‘flexible’ procedures. They also noted that the timeline for a case is often a ‘few months.’¹⁵²

6.5.2.1.2 Deference to Moral Preferences and Policy Considerations

In Chapter 5, it was contended that the high level of user satisfaction with the IDC may be explained by the fact that the Committees grant decisions that the users consider fair. It was also argued that users may consider decisions fair because IDC adjudicators defer to moral preferences and policy considerations.

The participants were asked about the importance of moral/religious preferences and policy considerations in deciding cases (Question Number 21) and whether they consider the conscionability of the contractual terms and the reasonable expectations of the parties when deciding cases (Question Number 22).

With regard to the importance of moral and religious preferences and policy considerations, all the participants pointed out that they had an obligation to apply the *Shariah*.

Participant 3:

*The **Shariah** is the Constitution. It is the foundation of laws. Moral/religious preferences dictate our actions and decisions. If your action violates the *Shariah*, we will decide against you. If you are **dishonest**, if you are trying to deceive the other person, then you are not a good Muslim and we will decide against you.*

Participant 4:

*We must apply the **Shariah**. That is the main law. It is a religious law, but it is also positive law. We consider policy if it is in accordance with the *Shariah*.*

Participant 13:

*The Judge must be a **good and devout Muslim**. Moral/religious preferences are very important. They determine who wins the case.*

With regard to the consideration of the conscionability of the contractual terms and the reasonable expectations of the parties when deciding cases, the participants stated as follows:

¹⁵² This is consistent with the findings of the study conducted by Nimmer that the views of adjudicators are important determinants of the stress laid by Courts on administrative goals such as timeliness. See R Nimmer, ‘A Slightly Moveable Object: A Case Study in Judicial Reform in the Criminal Justice Process: The Omnibus Hearing’ (1976) 48 *Denver Law Journal* 206, 230.

Participant 1:

*Parties must act in **good faith**. **Islamic law** imposes a good faith obligation on all persons. If the contract is unconscionable, then one party acted in bad faith and cannot be given a favourable judgement.*

Participant 3:

*Conscionability and reasonable expectation depend on what is **fair** in each case. If the expectations are **reasonable** and fair, then we have to take that into account. If contractual terms are not conscionable from my standpoint as a judge, then yes, I will not enforce those terms.*

Participant 9:

*The expectations of the parties are very important if they are **reasonable** and the parties are **honest**. Did they have those expectations when entering into the contract? Did the other party know they had those expectations? Is it **fair** to make these assumptions? These are all important factors.*

Participant 13:

*There are many complaints about insurance companies imposing **one-sided** contracts on customers. We do not enforce such contracts against customers where they no **choice** and have **contributed** to the pool.*

Participant 17:

*We consider the conscionability of the contractual terms when the terms are the insurance company's terms and the customer was not given the **opportunity to negotiate**. We consider the reasonable expectation of the parties if it is **fair** to both parties. Islamic law requires fairness. We can adopt foreign models if they comply with the **Shariah**.*

The participants therefore communicated that moral and religious preferences are part and parcel of the *Shariah* which they must apply as 'good and devout Muslims.' The participants also communicated that they may take into account the conscionability of the contractual terms and the reasonable expectation of the parties if it is 'fair' in the circumstances and the parties acted in 'good faith'. This is because the '*Shariah*' requires fairness. The participants did not state that they consider unconscionability and reasonable expectation as principles guiding the interpretation of contracts. They simply endorsed the values underpinning these principles.

Hence, the principles may be said to be an inevitable consequence of efforts geared at achieving fair outcomes.

The responses of the participants are concordant with the contention in Chapter 5 that in practice the Committees provide protection to policyholders by conceiving of problems such as illusory coverage or unconscionable advantages as interpretive. This reinforces the submission in Chapter 5 that the high level of user's satisfaction with the IDC may be explained by the fairness of outcomes in the Primary Committees and Appeal Committee.

6.5.2.1.3 Participants' Perspective on the Experience of Users

The participants were asked to explain why most consumers are satisfied with their experience with the IDC (Question number 23) and whether they know of any concerns that consumers have with the IDC (Question number 24).

With regard to high level of consumers' satisfaction, the participants explained as follows:

Participant 1:

Consumers are happy with the Committees because it is a better alternative than the courts and arbitration. They are given the opportunity to settle through mediation but most of them prefer the Committees. We apply the Shariah in a fast and flexible way.

Participant 6:

The Committees protect consumers. They are satisfied because they cannot be abused by the insurance companies. They are treated fairly by the Committees and they obtain swift compensation.

Participant 13:

Consumers are satisfied because the process is fast, cheap and straightforward. The Committees were created to protect them. So, they satisfied with the protection provided by the Committees which is better than what mediation offers.

Participant 14:

They satisfied because they get a decision in a matter of a few months. We decide what is fair for the parties and direct insurance companies on how to pay compensation in a manner that is pleasing for all. There is no better and more effective system than this.

Participant 18:

The Committee gives them the opportunity to challenge insurance companies. They can do so with limited resources and they obtain compensation after a few months.

With regard to any concerns that consumers may have with the IDC, the participants responded as follows:

Participant 3:

Some of the insurance contracts do not comply with the Shariah and we cannot recognise and enforce them. This is where we cannot sever the non-compliant parts from the rest of the contract. It can be very difficult for consumers who have contributed for many years and need compensation.

Participant 4:

Some are not happy with a strict application of the Shariah. Others are not happy because the Committees are too liberal. They are not always sure about how we will apply the Shariah.

Participant 8:

Many consumers need immediate compensation. They come to us because the insurance companies do not want to compensate them for their loss. Going through the process and waiting for six months for a decision can be very difficult.

Participant 15:

Sometimes procedures are slow and complex. They have to travel to Jeddah or Riyadh for the hearing. There are important costs involved especially where the process takes several months.

The participants communicated that the high level of satisfaction of consumers may be explained by the fact that the IDC applies the *Shariah*, the parties are treated fairly by the

Committees, and the process is speedy, cost-effective and simple. They also stated that the IDC is ‘better’ or more effective than litigation and other ADR options.

The participants also communicated that the Committees do not always enforce contracts that are not *Shariah*-compliant, and for some consumers, the process is slow, costly and unpredictable. Nonetheless, this is concordant with only two of the six shortcomings of the IDC discussed in Chapters 3, 4 and 5: cost and duration and unpredictability. The IDC adjudicators did not mention privacy, flexibility, neutrality, and finality and enforceability.

6.5.2.1.4 Participants’ Conclusions and Recommendations

In conclusion, the participants were asked whether the current substantive and procedural laws allow Committees to address the concerns of consumers (Question number 25). The participants were also asked to make recommendations of changes they would like implemented (Question number 26).

With regard to the current substantive and procedural laws and recommendations, the participants testified as follows:

Participant 1:

Our insurance market is relatively new and continues to evolve every year. The Cooperative Insurance Law and the Shariah regulate this market in a flexible manner. It is important for the law to state clearly when insurance from non-Muslim countries applies and when it should be rejected outright.

Participant 2:

The Saudi Arabian Monetary Agency is the regulator of the insurance market and also the appellate body. Our decisions are appealed to this agency. It wields too much power. We need more legal checks to encourage more independence.

Participant 5:

Some parties still find it difficult to present their case and arguments during the hearings before the Committees.

Part 13:

The procedural rules are **unclear**. The Committees have a very **broad discretion** as to matters of evidence and procedure. Parties are not sure whether they can rely only on written declarations or testimonies to support their cases.

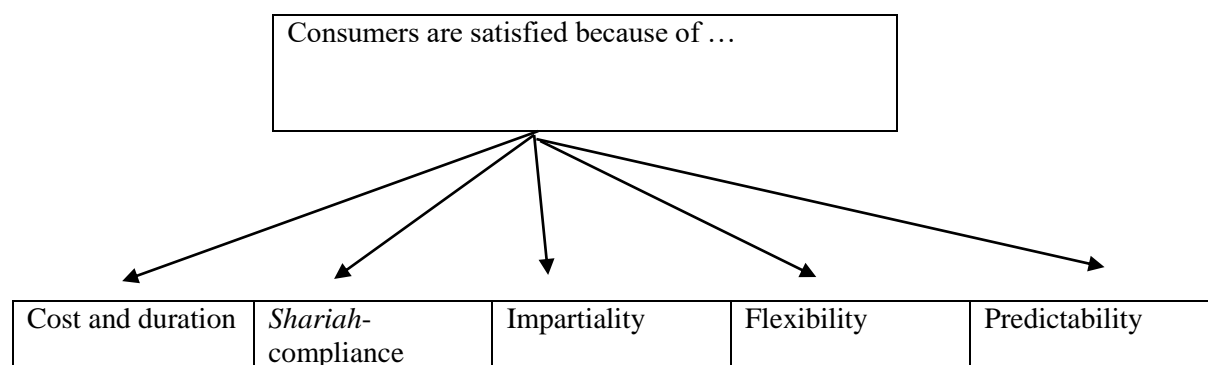
Participant 15:

The physical location of the Primary Committees was moved out of the premises of the Monetary Agency but there are still only three Primary Committees and a centre for motor insurance claims.

The participants therefore communicated that the Committees will be able to address consumers' concerns in a more effective way if the law provides for independence of the process, more clarity in the procedure, addresses logistical constraints and allows parties who are unable engage in oral advocacy to rely on other types of evidence.

Table I below shows how the researcher identified the interpretative repertoires and used the cluster of participants' expressions or terms to construct meaning. In other words, it shows how the participants' responses positioned the IDC as regards the high level of satisfaction of consumers.

Table I: Interpretative repertoires and how they position the IDC with regard to consumer satisfaction



Procedures are in the IDC are cost-effective and speedy: few months, swift, fast, short, cheap, less expensive, enough time, few months, better alternative, resources, immediate compensation	The Committees apply Islamic law: Islamic law, Shariah, Quran, good and devout Muslim	The Committees are impartial: fair, treated equally, good faith, honest	The procedures are flexible: simple, not complex, reasonable, one-sided, opportunity to negotiate, contributed to pool	Decision-making by the Committees is predictable: reliable, straightforward, well-reasoned, always explain, understand
--	---	---	--	--

Table I above shows how the researcher used the discourse analytic method to capture the participants' perspective on adjudication in the IDC. The perception of the IDC adjudicators who were the participants may explain why the IDC should enjoy such a high level of institutional legitimacy (as shown in Chapter 5) despite the absence of clear guidance by the Working Rules (as shown in Chapters 3 and 4). The participants' expressions that were extracted and isolated by the researcher are highlighted. These expressions were mentioned consistently by the participants and illuminate the research phenomenon. In order to transform the expressions into statements appropriate to scientific discourse supporting this study, the expressions were grouped to form clusters of themes which represent each column in the table. A summary of all the themes provides a holistic perspective on the relationship between the high level of satisfaction of consumers and IDC adjudication. As such, consumers are satisfied with the IDC adjudication because the procedures are cost-effective and speedy, the Committees are impartial and apply Islamic law, the procedures are flexible, and decision-making is predictable.

The disconnect between the theoretical/doctrinal analysis and the practical inquiry shown in Chapter 5 may be explained by the fact the theoretical/doctrinal analysis was shaped by principles and ideals of the United Kingdom and United States given that the analysis is largely based on scholarship from these countries. The qualitative study therefore reveals that the high

level of satisfaction of users of the IDC may be explained by factors that are unique to the Saudi society; factors which may not be easily captured by an investigator who is far removed from the society. Thus, the IDC adjudicators have a different conception of what constitutes a well-reasoned explanation, and the explanations they provide satisfy the parties, specifically consumers. Also, the adjudicators do not consider precedent when discussing the sources of law. Hence, neither the adjudicators nor the parties believe creating and applying precedent enlightens the public and enhances predictability. Lastly, from the perspective of adjudicators and consumers, ADR options are more inaccessible to with regard to cost and duration.

6.6 Conclusion

Following the doctrinal analysis (conducted in Chapters 3 and 4) and the practical inquiry (conducted in Chapter 5), empirical data was collected justifying the contention that the level of satisfaction of parties, specifically consumers or policyholders, is strongly linked with their satisfaction with the outcomes of the hearings or whether they believe the adjudicator's decision is fair. A critical review of the existing literature undertaken in Chapters 2, 3 and 4, as well as the critical examination of IDC cases undertaken in Chapter 5 informed the empirical inquiry. Given that the qualitative research methodology adopted for the study was phenomenology, the researcher's conclusions are based on the perceptions of IDC adjudicators.

The sampling strategy used was purposive sampling. The adjudicators of the IDC who were available and accepted to participate in the study comprised the sample. The size of the sample that was selected was 34 adjudicators or members of the IDC, whether they served as legal advisors or panel members drawn from the insurance industry. 19 of the 34 adjudicators decided to participate in the study. The participants were well versed with the studied phenomenon. This enhanced the dependability and conformability of the findings. The researcher used the questionnaire to collect qualitative data. The participants were able to complete the questionnaires diligently in the calm of their offices or home. They had the opportunity to read up on the relevant issues to refresh their memories before responding to the questions. This would not have been possible if the researcher had used the face-to-face or telephone interviews. The questions were directed to the participants' experiences, perceptions, viewpoints and convictions about the IDC.

The analysis of the data was conducted at the textual and interpretative level. The researcher built interpretative repertoires by identifying terms or expressions that were consistently used by the participants to describe adjudication by the IDC. Responses that were similar were

placed under the same category. The participants stated that the IDC is an effective dispute resolution option because it is cost-effective and renders fair decisions in a timely manner and in accordance with the principles of the *Shariah*. They also stated that the ADR options (arbitration, mediation, and negotiation) are not effective in the KSA because they are complex, expensive, protracted, and unreliable. They did not consider precedent when asked about any hierarchy or priority of sources of law. They simply emphasised the primacy of Islamic law. Also, they stated that there was no need for a requirement that a tribunal provides the reasons supporting its decision because that this is the essence of judging. Also, they stated that the IDC provides faster resolutions to disputes when compared to ordinary courts because of informal and flexible procedures. Also, they agreed that they may take into account the conscionability of the contractual terms and the reasonable expectations of parties because the *Shariah* requires fairness.

It was then argued that the disconnect between the theoretical/doctrinal analysis and the practical inquiry may be explained by the fact the theoretical/doctrinal analysis was shaped by principles and ideals of the United Kingdom and United States given that the analysis is largely based on a review of literature from these countries. Thus, the qualitative study reveals that the high level of satisfaction of users of the IDC may be explained by factors that are unique to the Saudi society; factors which may not be easily captured by an external investigator or one who is far removed from the society.

The next Chapter concludes this study by linking the outcomes of the theoretical/doctrinal analysis, practical inquiry and qualitative study to the research aim and questions. It also makes recommendations for further research.

Chapter 7: Conclusion

7.1 Introduction

The following avenues in which consumers may challenge insurers' adverse determinations have been critically assessed in this study: the IDC (administrative tribunal), litigation, negotiation, mediation, and arbitration. However, in the KSA, parties must submit disputes to the IDC. The parties are then required to seek mediation, and if it fails, the dispute is submitted to a relevant Primary Committee. It is uncertain what factors motivated the Saudi legislator to compel IDC adjudication. This study has sought to determine whether the legislator is justified. This Chapter concludes the study by showing how the research questions were addressed in order to achieve the research aim. It also makes proposals for reform and recommendations for further studies.

7.2 Addressing the Research Questions and Achieving the Research Aim

In Chapter 1, it is noted that this study is premised on the contention that the security promised by substantive insurance law to consumers is inconsequential if it cannot be delivered through an efficient and effective dispute resolution option. In light of this contention, the study set out to determine whether the administrative tribunal created by the CICCL as the official and compulsory dispute resolution forum for all insurance disputes, the IDC, is the most effective dispute resolution option in the KSA. In order to achieve this aim, the following questions are addressed:

- What is the rationale for compelling IDC adjudication?
- Have IDC adjudicators adopted any specific measures to protect consumers?
- Are consumers satisfied with the IDC?
- What is the most effective ADR option for policyholders seeking to challenge the adverse determinations of insurers in the KSA?
- Can an empirical study explain the disconnect between the doctrinal analysis and the findings of a practical inquiry of the IDC?

In addressing the above questions, this study demonstrates that although the Saudi legislator has established a fast and accessible resolution forum for consumers, there are flaws in the CICCL and its Implementing Regulations as well as in their implementation that prevent the development of a formal and cost-effective forum that is more accessible than courts and other forms of ADR. This section shows how each question was addressed.

7.2.1 What is the Rationale for Compelling IDC Adjudication?

This question is addressed by Chapters 2, 3, 4 and 6. In Chapter 2, it is noted that the notion of insurance has its roots in early Arabic society. Thus, it is not new in the KSA. Its origins may be traced to the concept of *Aqilah*, which refers to a pool of risk and resources. It was adopted by early Islamic authorities and became the cornerstone of the development of the Islamic principles of shared responsibility, social solidarity, and mutual cooperation. Hence, it justified the provision of mutual financial security against specified risks of loss or damage to participants in a cooperative insurance scheme.

However, it is also noted that conventional insurance remains controversial from the Islamic perspective. As a result, the Board of Grievances consistently dismissed claims based on conventional insurance policies on the grounds that such policies were not *Shariah*-compliant. Examples are discussed in Chapters 5 and 6. Thus, consumers were generally unable to challenge adverse coverage determinations made by conventional insurers in Saudi courts. This problem became pressing at the beginning of this century because in 2002, the Foreign Investment Act allowed companies to have foreign majority ownership, and in 2003, insurance was removed from the list of sectors in which foreign entities were prohibited from investing. Also, in 2004, the Saudi government formally ended its monopoly over the insurance industry by inviting private companies to register and trade as public listed companies on the Saudi Stock Exchange (*Taduwal*). As such, consumers increasingly purchased conventional insurance policies from several private insurers, thereby increasing the incidence of insurance-related disputes between consumers and insurers based on conventional policies.

In November 2003, the CICCL came into force. Its Implementing Regulations were published in April 2004. The CICCL provides that insurance products must be purchased within the scope of Islamic finance and its Implementing Regulations. It also empowers the central bank, SAMA, to regulate the insurance industry. Importantly, Article 20 of the CICCL provides for the creation of Committees that hear and decide insurance-related disputes. This led to the creation of the IDC. This local forum has exclusive jurisdiction over insurance-related disputes

in the KSA, and participation is not voluntary. Although the CICCL does not prohibit arbitration of insurance disputes in the KSA, arbitration clauses in insurance contracts must be approved by SAMA, and SAMA's policy is that all parties should submit disputes to the IDC.

The rationale for compelling the creation of the IDC is that the creation of an administrative forum in which legal and industry experts can resolve disputes related to *Shariah*-compliant insurance policies and *Shariah* non-compliant conventional policies would ensure the swift, flexible and cost-effective resolution of insurance disputes. It must be noted that this conclusion is based on the researcher's assessment of the CICCL and Implementing Regulations, given that the government has not explained the motivation behind Article 20 of the CICCL.

An assessment of the IDC Procedural Rules (as amended in 2014) reveals that the IDC procedure is streamlined and offers the prospect of a faster and more flexible and accessible resolution than litigation. For example, the CICCL does not mandate a specific procedure for resolving disputes in the Primary Committees and SAMA Appeal Committee. The adjudicators are simply required to give each party an opportunity to be heard and choose the remedy that is best adapted in each case. Hence, the adjudicators consider a broad array of evidence from oral testimony to sworn statements by witnesses and policyholders may recover their legal fees in addition to compensation. Nonetheless, this begs the question whether the IDC represents a better dispute resolution option than other forms of ADR which the Saudi legislator could have recommended. In other words, has the endeavour to resolve insurance-related disputes in a fast, flexible and cost-efficient forum created a better source of compensation for aggrieved consumers or policyholders than negotiation, mediation, and arbitration? Finding an answer is the main aim of this study. The answer to the question regarding the rationale for compelling IDC adjudication leads us to contend the Saudi government believes that the IDC is a better source of compensation for aggrieved consumers or policyholders than other forms of ADR and litigation. The next section discusses the second question addressed in this study in order to achieve the same aim.

7.2.2 Have IDC Adjudicators Adopted Any Specific Measures to Protect Consumers?

Given the lack of specificity in the provisions of the IDC Procedural Rules regarding panel decision-making as well as the broad discretion enjoyed by IDC adjudicators, the decisions of the Committees seldom appeal to any Sharia principle or provision of the CICCL. Rulings are based on what is, in the opinion of the panel, logical and fair in the circumstances. Hence, some

decisions of Primary Committees may be explained by the fact that they prefer interpretations that are fair and reasonable to interpretations that lead to unreasonable or unfair outcomes. For example, the Primary Committee has ruled that it is unfair for third parties to be harmed by the sale of third-party liability insurance policies that contain illusory coverage.¹ Also, the Primary Committee's panel of adjudicators largely appealed to its members' personal values or sense of justice in order to rule that policyholders must be protected where there is uncertainty.² The Committees have also focused on what the members consider fair and just,³ and the reasonableness of claimants' expectations that their losses were covered.⁴ It is equally important to note that unlike the Board of Grievances, Primary Committees do not refuse to hear claims because they are based on conventional insurance policies which are generally not *Shariah*-compliant or contain prohibited elements such as *Gharar* (uncertainty) or *Riba* (interest).

It is shown in Chapters 5 and 6 that decisions of the SAMA Appeal Committee have sometimes been based on the members' evaluation of the conscionability of the contractual terms, with little regard given to legalistic justification.⁵ The Appeal Committee has also held that it would be unconscionable to impose an obligation on the insurer to indemnify policyholders who have suffered loss or damage but have not submitted a claim to the insurer.⁶

As such, the IDC Committees have adopted specific measures to protect consumers where necessary. In fact, in the 102 motor insurance cases resolved between 2007 and 2017 (cited in Appendix I), the Committees have only affirmed insurers' decisions not to pay compensation where the losses suffered by the claimants were clearly not covered by the policies.⁷ Where there was illusory coverage or the policyholders reasonably expected that the losses were

¹ See Case No. 360714, Jeddah Primary Committee, Decision No. 343/C/1436 AH; Case No. 261154, Riyadh Primary Committee, Decision No. 1429-44; Case No. 300734, Riyadh Primary Committee, Decision No. Case No. 261154.

² See Case No. 370207, Dammam Committee, Decision No. 83/D/1437 AH.

³ See Case No. 330440, Riyadh Primary Committee, Decision No. 1433-210; Case No. 370783, Dammam Committee, Decision No. 192/D/1437 AH.

⁴ See Case No. 360310, Riyadh Primary Committee, Decision No. 276/T/1436 AH; Case No. 261187, Riyadh Primary Committee; Case No. 250106, Riyadh Committee; Case No. 290206, Jeddah Committee.

⁵ See Appeal No. 2370029, Appeal Committee, Decision No. 96/A/1437 AH; Appeal No. 2370054, Appeal Committee, Decision No. 139/A/1437 AH.

⁶ See Appeal No. 3370036, Appeal Committee, Decision No. 191/A/1437 AH and Appeal No. 1330265, Appeal Committee, Decision No. 629/A/1436 AH.

⁷ See for example, Case No. 260022, Jeddah Primary Committee; Case No. 270296, Jeddah Primary Committee; Case No. 290705, Riyadh Primary Committee.

covered, the Committees have decided in favour of the claimants and ordered the insurers to pay the claimants' legal fees in addition to compensation.⁸

It must however be noted that the Committees have hardly appealed to the prescriptions of the relevant statutes or IDC precedent, contrary to Article 9 of the Working Rules. The panels seem to rely mainly on members' personal sense of justice. This is arbitrary and renders no assistance to the jurisprudence. It makes it difficult to prognosticate the continuous protection of consumers in future. It also makes it difficult to argue that the IDC represents a better dispute resolution option than other forms of ADR and litigation.

7.2.3 Are Consumers Satisfied with the IDC?

As noted in Chapter 5, previous studies have shown that the level of satisfaction of litigants with small claims is strongly linked with their satisfaction with the outcomes of the hearings or whether they believe the adjudicator's decision is fair.⁹ Also, the influential study conducted by Rottman et al revealed that a high level of satisfaction with courts is explained by three predictors, namely, belief in fair procedures, belief in courts being affordable and proceedings being timeous, and belief in fair outcomes.¹⁰ In the same vein, the high level of satisfaction of IDC users as shown in the results of the surveys conducted by the General Secretariat in Chapter 5 may be attributed to the respondents' belief in the fairness of procedures and outcomes.

The General Secretariat's surveys show that procedural fairness accounts for more variance than any variable. It comprised the following factors: procedure for communicating hearing dates, how the hearing was conducted, time taken to resolve the case, and compliance with the timeframe for delivering the ruling. The respondents were satisfied with the way the Committees followed the rules, respected the rights of parties, as well as the flexibility of the

⁸ See Case No. 280188, Riyadh Primary Committee; Case No. 290829, Dammam Primary Committee; Case No. 340315, Dammam Primary Committee.

⁹ See R Gosling, *Survey of Litigants' Experiences and Satisfaction with the Small Claims Process* (Department of Constitutional Affairs Research Series 2006) 42-43, 239; H Angle et al, *Witness Satisfaction: Findings from the Witness Satisfaction Survey 2002* (Home Office 2003) 47, 59-61; E Whitehead, *Witness Satisfaction: Findings from the Witness Satisfaction Survey 2000* (Home Office 2001) 71-73. See also H Genn et al, *Tribunals for Diverse Users* (Department for Constitutional Affairs Research Series 2006) 239 (the outcome of proceedings in tribunals is the only variable independently linked to fairness). See also B Hayward et al, *Findings from the Survey of Employment Tribunal Applications 2003* (Department of Trade and Industry Employment Relations Research Series 2004) 59, 150 (dissatisfaction with successful outcomes may be explained by the levels of compensation being lower than expected and the absence of a formal apology).

¹⁰ D Rottman et al, *Perceptions of the Courts in Your Community: The Influence of Experience, Race and Ethnicity* (National Center for State Courts 2003) 53-54.

processes as regards the conduct of the hearing where parties' arguments were heard in open court and their expectations were taken into account by the panel of adjudicators.

Also, it is shown in Chapters 5 and 6 that although the panels of adjudicators in the various Committees have not adopted common measures to guide future panels in protecting consumers, the panels generally rely on the members' personal sense of justice to achieve this objective. Thus, it is submitted that the level of satisfaction of parties, specifically consumers or policyholders, is strongly linked with their satisfaction with the fairness of the outcomes of the hearings. It is also submitted that the level of satisfaction of parties provides support to the contention that the IDC is an effective dispute resolution option. The next section shows how this study achieved the aim of determining whether the IDC represents the best dispute resolution for consumers.

7.2.4 What is the Most Effective ADR Option?

In order to achieve the research aim of determining whether the IDC provides the best forum for consumers in the KSA, the IDC is analysed at three levels: doctrinal, practical and empirical. The doctrinal analysis of the relevant laws and regulations governing the IDC is conducted in Chapters 3 and 4; while Chapters 5 and 6 analyse empirical data collected by the General Secretariat and the researcher.

In Chapter 3, it is noted that the IDC is an administrative tribunal which runs parallel to the court system, in a space situated somewhere between executive and judiciary bodies. This explains why it is used as a legal control mechanism for decision-making in the administration. It is also stated that the choice of the administrative tribunal model is justified from a doctrinal standpoint because previous studies have shown that administrative tribunals provide faster and more cost-effective resolutions of disputes, compared to the ordinary court structure. Thus, a consumer with few resources may pursue a claim before the IDC, either with or without counsel, and the lesser procedural burden often results in time and cost savings for the consumer.

Also, the panel of adjudicators have more flexibility than the judges in courts as regards the construction of specific and rule-like doctrines. Although in practice, the Primary Committees and Appeal Committee do not generally adhere to prior decisions, their decisions can be treated

as precedent which may be deferred to by subsequent Committees in resolving disputes.¹¹ This enhances the predictability of the process.

Nonetheless, the doctrinal analysis revealed that when compared to the archetypal administrative tribunal, the IDC does not effectively achieve the primary goal of embracing the use of an administrative tribunal, which is to improve parties' access to justice via a competent adjudicative authority within the relevant industry. This is because of the following reasons:

- There is a noticeable lack of guidance on who may be eligible for appointment to the adjudication panel of the Primary Committee.
- The Working Rules are silent on the impartiality and competence of adjudicators or Committee members. Unlike trial judges, who are subject to strict rules on conflicts and recusal, there are no comparable provisions governing Committee members.
- Article 9 of the Working Rules requires the Committees to decide cases 'in accordance with the laws and regulations that determine the nature of the dispute, the applicable rules, and rulings reached at by the judiciary, and the comparative jurisprudence for settling insurance disputes and violations.' However, it does not provide for any hierarchy or priority of these sources. There is for example no delineation of binding or mandatory versus persuasive authority, along with an established order of authority, in order for the system to generate predictable and consistent decisions. Such ambiguity creates a substantial risk of bias towards the policy preferences of adjudicators. Thus, each dispute brought before a Primary Committee is essentially resolved in an ad hoc manner.
- Article 170 of the Law of Procedure provides that '[i]f the wording of the judgment is vague or confusing, the litigants may request an interpretation from the court that rendered the judgment.' However, this does not shed light on what should be routinely included in the Primary Committee's decision.
- The Working Rules are silent on the available grounds for objection and appeal, as well as the scope of the review upon appeal. This is true for the Appeal Committee (whose limited to examine claims of less than 50,000 riyals by Article 8 of the Working Rules).

¹¹ The CICCL requires the Committees to establish and rely on precedents.

- The Working Rules are silent on the issue of enforcement. Although the decisions issued by courts and arbitral tribunals are subject to enforcement under Enforcement Law, Article 2 of this Law expressly excepts administrative decisions. However, it is uncertain whether this means decisions rendered in administrative forums or simply, decisions related to administrative matters.

The doctrinal analysis also reveals that the litigation-based model (court system) has the same shortcomings as the IDC. This is because of the following reasons:

- Consumers are likely to face the expenses, delays, and effort required to litigate in the IDC. Consumers who have suffered loss and are in desperate need of compensation may seldom have sufficient resources to devote to the prolonged IDC adjudication as well as litigation.
- The system is laden with rules, and can be unpredictable, especially where cases are decided on an ad hoc basis.
- No legislation compels courts to specifically address the imbalance of power between insurers and consumers which underpins the difficulty of consumers to negotiate terms of policies on an equal footing.
- Where a dispute implicates the substantive laws of more than one country, all Saudi courts and administrative tribunals must apply Saudi law as the most appropriate law to resolve the dispute. As such, a foreign party with little or no grasp of the *Shariah* as it is applied in the KSA is more likely to avoid both the Saudi court and the IDC.

Despite the above shortcomings, the doctrinal analysis reveals that the IDC compares favourably to negotiation and mediation, but not to arbitration. It is noted that negotiation has the following advantages:

- It is traditionally the preferred method for settling disputes following from the *Sulh*, which means resolving or fixing with emphasis on the importance of religion. Hence, disputants in the Middle East have traditionally preferred negotiation because they emphasise building personal relations by socialising and settling disputes through continued interaction in the Muslim society. A cycle of revenge is avoided and the bonds between parties are affirmed.

- It is the best option when it becomes clear to the parties that unilateral action through the courts or tribunals would impose a heavy toll on both sides.
- It is more a cost-effective and swifter process for settling disputes than litigation in courts and administrative tribunals.

However, it is pointed out that negotiation has not been very successful because of the following reasons:

- Parties are often too partial and emotionally invested to make rational and objective decisions.
- The effectiveness of negotiation largely depends on the cultural background of the parties. It is more likely to be effective where the parties are locals or resident in the KSA. They may easily deal with each other directly or through respectable advisors in the local community.
- The absence of any official guidelines is problematic. There is no requirement or even expectation of predictability and consistency in the way in which negotiation should be conducted.

With regard to mediation, it is noted that parties are required to seek mediation before submitting the disputes to the relevant Primary Committee. It is also noted that this dispute resolution option has the following advantages:

- The culture of mediation was adopted and promoted by the Holy Prophet, and subsequently, the successors of the Holy Prophet, Khalifahs, were considered mediators.
- Like negotiation, mediation promotes solidarity between Muslims who must come together as members of the community and settle their disputes in a manner that ensures peace.
- Given that mediation is by definition private, it is easier for the parties to ensure the confidentiality of the process and even the dispute, unlike litigation, public tribunal adjudication or even arbitration.
- Mediation ensures the achievement of outcomes deemed fair by both parties.

However, it is noted that mediation has the following disadvantages:

- Decisions of the mediator that do not comply with the *Shariah* are unenforceable.
- If a party refuses to sign the mediator's decision, it does not become legally binding on both parties. Hence, a party can reject the settlement agreement recorded by the mediator.
- If a party is not willing to assist in reaching an amicable settlement, the mediator cannot intervene.
- Given the absence of official guidelines on qualifications, weaker parties or foreigners may be less keen on selecting mediation since it may be difficult to find a mediator who is impartial, equidistant and regulates discourse in a manner considered fair by both parties.

With regard to arbitration, it is stated that the CICCL does not prohibit the enforcement of arbitration clauses in insurance policies. This option has the following advantages:

- Like negotiation and mediation, the culture of arbitration was adopted and promoted by early Muslims. The *Shariah* even allows the *Dhimmiyin* or Jews and Christians who are resident in Muslim countries to create a framework for settling their disputes. Thus, parties may submit disputes to arbitrators of their choice. However, where one of the parties is Muslim, the Maliki, Shafi'i and Hanbali Schools require a Muslim adjudicator to settle the dispute, although they also recognise non-Muslim arbitrators where both parties consent.
- Article 16 of the Arbitration Law preserves the arbitrator's impartiality by requiring that an arbitrator should have no vested interest in the dispute.
- Arbitration defers to party autonomy in resolving disputes allowing the parties to choose the arbitrators, seat of arbitration and applicable law.
- Arbitration is flexible because the arbitral tribunal may apply the laws of a foreign, non-Muslim country, although it is expected to take the *Shariah* into account where enforcement is anticipated to take place in the KSA.
- Article 40 of the Arbitration Law requires arbitrators to render their decision within twelve months of the initiation of arbitration proceedings.

- Given the expediency with which a dispute is resolved through arbitration, the parties may benefit from cost savings.
- The tribunal's final decision and award are not subject to extensive judicial review or appeal.
- The process is typically the same among varying arbitral institutions, seats, and ad hoc models. The Arbitration Law of 2012 is modelled on the UNCITRAL Model Law. Thus, there are significant similarities between the KSA's arbitration regime and that of other countries that have adopted the UNCITRAL Model Law.

It is also noted that arbitration has the following disadvantages:

- Although arbitration ought to provide a private and confidential means for settling disputes, there are no privacy laws in the KSA that protect the confidentiality of such processes.
- Consumers are less likely to know impartial and competent arbitrators with no vested interest in the case because consumers, unlike insurers, often deal with arbitrators just once.

It must also be noted that although arbitration is the most beneficial option from a theoretical perspective, the survey conducted by the General Secretariat shows that most users are satisfied with the IDC.

The comparison of the IDC model to litigation and other forms of ADR from a doctrinal perspective is summarised using five criteria for judging the quality of a dispute resolution option as shown in Table VII below:

Table VII: Comparison between the IDC and Other ADR Options

Dispute Resolution Option	Cost and duration	Shariah-compliance	Impartiality	Flexibility	Predictability
IDC	<ul style="list-style-type: none"> • More cost-effective and accessible than litigation. • Resolution by Primary 	<ul style="list-style-type: none"> • Decisions are required to comply with the <i>Shariah</i>. • Insurance contract 	Lack of guidance on eligibility, impartiality and competence of IDC adjudicators.	Working Rules do not provide for any hierarchy or priority of these sources.	<ul style="list-style-type: none"> • Uncertainty regarding what should be included in Primary Committees' decisions.

	Committee and Appeal Committee takes 12 months or longer if the case is complex	s that are non-compliant are enforced .			<ul style="list-style-type: none"> • No timeframe within which a case must be concluded . • Uncertainty regarding available grounds for objection and appeal, and the scope of the review upon appeal. • Decisions lack finality.
Litigation	Costly and most cases last for more than 2 years.	<ul style="list-style-type: none"> • Decisions must be <i>Shariah</i>-compliant. • Only <i>Shariah</i>-compliant contracts are enforced . 	Clear guidance on the eligibility, impartiality and competence of judges.	Procedures are not flexible as court must follow rules of procedure and evidence strictly.	<ul style="list-style-type: none"> • Board of Grievances has enforced contracts that do not comply with the <i>Shariah</i> in a few cases. • Decisions lack finality.
Negotiation	Cost-effective and lasts for a few days or weeks.	Parties may agree to enforce contracts that are not <i>Shariah</i> -compliant.	No guidance on the eligibility, impartiality and competence of negotiators.	No guidance on procedures.	<ul style="list-style-type: none"> • No timeframe within which negotiation must be concluded . • Decisions lack finality.
Mediation	Cost-effective and lasts for a few days or weeks.	Mediation through the General Secretariat must	No guidance on the eligibility, impartiality and	No guidance on	<ul style="list-style-type: none"> • No timeframe within which

		comply with the <i>Shariah</i> .	competence of mediators.	procedures.	mediation must be concluded. • Decisions lack finality.
Arbitration	<ul style="list-style-type: none"> • It is not more cost-effective than the IDC. • Arbitrators must render their decision within twelve months of the initiation of proceedings. 	<ul style="list-style-type: none"> • Parties are free to choose the applicable law and seat of arbitration. • The arbitral award must comply with the <i>Shariah</i> else it would not be enforced in the KSA. 	<ul style="list-style-type: none"> • Arbitrators must have no vested interest in the case. • Insurers are more likely to impose arbitrators on consumers through contracts of adhesion. 	Parties are free to choose any language, substantive law and rules of procedure	<ul style="list-style-type: none"> • Proceedings are typically the same among varying arbitral institutions, seats, and ad hoc models. • Decisions are not subject to extensive judicial review or appeal.

Source: Researcher

In light of the above, it may be concluded that the option with the most advantages for consumers as regards successfully challenging insurers' adverse determinations is arbitration, not the IDC administrative model which is prescribed by the CICCL. Although arbitration is not as cost-effective and accessible as negotiation and mediation, it is flexible and predictable with prescribed rules of procedure, and a clear timeframe within which the arbitration must be concluded. The arbitral tribunal must issue the arbitral award within twelve months from the date of the commencement of arbitral proceedings. If an award is not issued within this timeframe, a party may appeal to the Court of Appeal to issue an order to terminate the proceedings. On the other hand, the IDC rules do not provide any guidance on a timeframe within which a case must be concluded, leaving the parties with significant uncertainty as to how long their case will continue.

Without attention to power asymmetries, in the event of loss, a consumer with few resources and in urgent need of compensation is more likely to compel insurance companies to indemnify him by submitting the dispute to the arbitrator designated in the policy. The arbitrator must have no vested interest in the dispute as required by Article 16 of the Arbitration Law. Nonetheless, as noted in Chapter 4, insurers may defeat this provision by naming friendly arbitrators in contracts of adhesion, whereby consumers are not empowered to negotiate or counter the insurers' offer. This is unlikely to happen at the IDC because parties cannot select the panel of adjudicators of the Primary Committee. Hence, the risk that the neutrality provisions of the CICCL may be abused in the IDC is minimal.

It follows that it would be misguided to recommend that the CICCL should compel arbitration as the resolution option regarding insurance-related disputes. What this study shows is that compelling a specific resolution option cannot be justified given that all available options have disadvantages that may be detrimental to different consumers under different circumstances. That is why it has been argued that dispute resolution can only be enhanced within the framework of 'process pluralism' whereby all matters are not subjected to the same treatment.¹² In other words, different parties, structures of disputes and issues should dictate different formats of dispute resolution.¹³ This accords with Fuller's argument that each dispute resolution option has its own norms and ethics ('integrity') that produce varied outcomes that may be justified in different contexts.¹⁴

Notwithstanding, the Saudi legislator must have intended to compel a cost-efficient, accessible and effective alternative to litigation that ensures that the playing field is levelled between the parties. Although it is shown here that the IDC does not achieve this goal better than arbitration, four landmark studies that influenced this research argued that if the legislator must compel a specific resolution option, it ought to be an administrative model.

¹² C Menkel-Meadow, 'Peace and Justice: Notes on the Evolution and Purposes of Legal Processes' (2006) 94 *Georgetown Law Journal* 553, 554-558. See also C Menkel-Meadow, 'Process Pluralism in Transitional/Restorative Justice – Lessons from Dispute Resolution for Cultural Variations in Goals beyond Rule of Law and Democracy Development' (2015) 3(1) *International Journal of Conflict Engagement and Resolution* 3, 9-12; C Menkel-Meadow, *Dispute Processing and Conflict Resolution: Theory, Practice, and Policy* (Ashgate 2003).

¹³ Menkel-Meadow, 'Peace and Justice', *ibid*, 555.

¹⁴ See LL Fuller and K Winston, *The Principles of Social Order: Selected Essays of Lon Fuller* (Duke University Press 1981) 26-29 (paper on the ideal of legal processes). See also, PS Atiyah, 'The Principles of Social Order: Selected Essays of Lon Fuller, edited With an introduction by Kenneth I. Winston, 1983 *Duke Law Journal* 669, 670; C Menkel-Meadow, 'Regulation of Dispute Resolution in the United States of America: From the Formal to the Informal to the Semi-formal' in F Steffek et al (eds), *Regulating Dispute Resolution; ADR and Access to Justice at the Crossroads* (Hart 2013) 420-424.

The most influential study was that conducted by Ury et al which introduced the concept of dispute systems design, and argued that industry-related disputes are best resolved using interest-based processes which may be divided into three ways: resolving disputes according to the interests of the parties, the rights of the parties, and their power.¹⁵ They also argued that resolving disputes by aligning the interests of parties yields the highest satisfaction with outcomes and involves the parties negotiating directly with the assistance of a third party.¹⁶ This approach is shown in Chapter 2 to involve the use of both mediation and ombudsmen or independent government agencies. Lastly, Ury et al advised that the rights-based processes such as arbitration should serve as backup while the use of power should be avoided.¹⁷ The IDC format is largely consistent with the recommendations by Ury et al.

The second study was that conducted by Costantino and Merchant which was influential in the drafting and implementation of the Administrative Dispute Resolution Act of 1990 and 1996 in the United States. They recommended the use of both the dispute systems design and ADR processes by federal agencies to offer fast, efficient and accessible claims against and by the government.¹⁸

The third study was that conducted by Robinson et al which demonstrated that the Dynamic Adaptive Dispute System should be used to encourage parties to make decisions and resolve disputes by aligning their interests and needs.¹⁹

The fourth study was that conducted by Schwarcz, which argued that the creative use of the ombudsman best achieves the objective of effectiveness, affordability, and accessibility. which are the goals of all ADR approaches that seek to resolve insurance disputes involving consumers.²⁰

This study however shows that some shortcomings must be addressed before the IDC can compare with the models recommended by the above authors. These shortcomings are discussed above and in Chapters 4 and 5. Nonetheless, this study conducted a practical inquiry

¹⁵ Ury WL et al, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* (Jossey-Bass 1988) 3-9, 14.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ CA Costantino and CS Merchant, *Designing Conflict Management Systems: A Guide to Creating Productive and Healthy Organizations* (Jossey-Bass 1996) 33-43.

¹⁹ P Robinson et al, 'DyADS: Encouraging Dynamic Adaptive Dispute Systems' (2005) 10 *Harvard Negotiation Law Review* 339, 360-364.

²⁰ D Schwarcz, 'Redesigning Consumer Dispute Resolution: A Case Study of the British and American Approaches to Insurance Claims Conflict' (2009) 83 *Tulane Law Review* 735, 790.

which provides different findings to the theoretical and doctrinal analysis. The practical inquiry affirms the position that the CICCL's prescription of mediation and the IDC administrative tribunal to resolve insurance-related disputes according to the interests of the parties yields a very high level of satisfaction with outcomes. Emphasis was placed on the findings of surveys conducted by the General Secretariat and decisions of the IDC Committees. Satisfaction was used by the General Secretariat as the sole measure of effectiveness because, as shown in Chapters 2 and 5, many studies have demonstrated that satisfaction is a surrogate measure of effectiveness and a reliable arbiter of the success of public organisations.

7.2.5 Explaining the Disconnect between the Doctrinal Analysis and the Practical Inquiry

The surveys conducted by the General Secretariat reveal that the total number of cases received by the three Primary Committees increased by more than 45 per cent between 2014 and 2016. Also, a vast majority of the persons (mostly policyholders) surveyed by the General Secretariat were very satisfied with their experience at the IDC due to the conduct of the Committee personnel (including the clerks and adjudicators), the swift responses to their inquiries, the fair and fast conduct of the hearing, strict compliance with the scheduling requirements, and the quality of services provided by the General Secretariat.

Also, the analysis of the decisions of the Committees reveals that the high level of satisfaction with the IDC may be explained by the privacy, flexibility, and neutrality offered by the CICCL and Working Rules. It is therefore argued that the high level of satisfaction of consumers with the IDC may be explained by their perceived fairness of the procedures and outcomes. The latter may in turn be explained by the standards used by some Committees to protect consumers against arbitrary adverse coverage determinations by insurers. Hence, operating outside of the court system, some Committees have been able to use their broad discretion to give significant weight to the reasonable expectations of parties and the fairness of the procedures and outcomes.

It follows that there is a disconnect between the results of the doctrinal analysis and the findings of the practical inquiry. Despite the shortcomings identified by the doctrinal analysis, the practical inquiry reveals that the IDC yields a very high level of satisfaction. This disconnect was explained by capturing the perceptions and justifications of IDC adjudicators. These were captured from empirical data that was collected from a sample of IDC adjudicators using a

qualitative questionnaire. The sampling strategy used was purposive sampling which, as noted in Chapter 6, is widely used in qualitative research for the selection of persons with a wealth of information related to the phenomenon of interest.

The qualitative study revealed that the high level of satisfaction of users of the IDC may be explained by factors that are unique to the KSA; factors which may not be easily captured by an investigator who is far removed from the society. Thus, the IDC adjudicators have a different conception of what constitutes a well-reasoned decision, and the explanations they provide in their decisions satisfy Saudi parties, specifically consumers. Also, the adjudicators do not consider precedent when discussing the sources of law because neither the adjudicators nor the parties believe creating and applying precedent enlighten the public and enhance predictability. They believe that the dispute resolution process is predictable because of the primacy of Islamic law.

The findings of the practical inquiry and analysis of empirical data provide support to the Saudi legislator's decision to compel parties to submit disputes to the IDC. The IDC's Committees have earned as high level of satisfaction from the consumers and adjudicators. Thus, from this standpoint, the IDC is a commendable avenue in which consumers may successfully challenge insurers' adverse determinations. Parties must use mediation before submitting disputes to the Primary Committee, and negotiation and arbitration have not been expressly excluded. However, the vast majority of disputes in the KSA are resolved by the Primary Committees. As such, it may be argued that most claimants believe that the IDC is the most efficient and effective dispute resolution option in the KSA.

7.4 Proposals for Reform

Despite the very high level of satisfaction of IDC users, there is nothing to suggest that the users would always be happy with the procedures and outcomes. Without a coherent and principled approach adopted by all the Committees, the inefficiencies brought about by the lack of specificity in the provisions of the IDC procedural rules would inevitably create higher production costs and more delays. In this light, certain reforms are urgently needed. The proposals listed below are centred on curbing the discretion of IDC adjudicators and reducing the risk of bias towards their policy preferences.

The proposals are as follows:

- The Implementing Regulations of the CICCL should be amended and clear guidance should be provided on the core competencies required for IDC adjudicators. It should be clear who may be eligible for appointment to the adjudication panel of the Primary Committee and SAMA Appeal Committee. IDC adjudicators should meet a set of eligibility criteria. There should be an objective level of experience and education that must be attained prior to becoming eligible for appointment, such as a university degree or a specific minimum number of years of industry experience. Also, consideration should be given to socio-economic factors, such as gender, criminal history, or any vested financial interests in the insurance sector.
- The Working Rules should be amended, and clear guidance should be provided on the impartiality and competence of adjudicators. They should be subject to strict rules on conflicts, recusal, and disqualification. The provisions should also provide a set of ethical principles to guide the conduct of adjudicators on issues of integrity, diligence, extra-judicial activities, independence, and the avoidance of impropriety. It may be important to consider whether these goals may best be achieved by a tribunal that is part of the judicial branch such as the IAT in Pakistan.
- Article 9 of the Working Rules should be amended in order to provide for a hierarchy or priority of sources. It should state which body of law binds the Committees and which may only serve as persuasive authority. Although it is shown in Chapter 3 that the doctrine of binding precedent does not have binding force in the Islamic judicial system, Article 9 should provide that the doctrine of binding precedent has persuasive value, and adjudicators should be required to rely on previous decisions while deciding cases based on their merit. This is because the KSA follows the civil law tradition and codified laws are likely to be more reliable. Nonetheless, an established order of authority will generate predictable and consistent decisions.
- Article 170 of the Law of Procedure should be amended in order to provide guidance to the Committees on the content that is required for their decisions. Article 170 should provide that the decisions should lay out the background facts, the issues considered by the Committee, along with a well-reasoned explanation of the law applied, and the route taken by the Committee to reach its conclusions. The panels should also demonstrate why the legal reasoning of previous cases do not apply where the previous cases dealt with materially similar facts.

- The Working Rules should be amended in order to provide clear guidance on the grounds on which the Primary Committee's decision may be appealed, as well as the scope of the review by the Appeal Committee and Board of Grievances upon appeal. Losing parties have an automatic right of appeal. Thus, it is important that they are able to specifically plead the reason why they believe the Primary Committee erred rendering its judgment.
- The Working Rules should be amended to provide clarity on whether the enforcement of the decisions issued by the Committees are governed by the Enforcement Law. It must be clarified whether Article 2 of the Enforcement Law excludes decisions rendered in administrative forums such as the IDC or only decisions related to administrative matters are excluded.

7.5 Recommendations for Further Studies

This study has demonstrated that all the available dispute resolution options have serious disadvantages that may be detrimental to different consumers under different circumstances. Thus, it may be argued that perfecting the option recommended by the CICCL is less achievable than promoting the resolution of disputes within the framework of process pluralism. In this light, it may be important to conduct a study on the use of such a framework in the KSA, where all insurance-related matters are not subjected to the same treatment. Such a study would determine how the law can guide parties towards specific dispute resolution options that are cost-efficient, accessible and effective, and have norms and ethics that are tailored to parties' needs and can potentially produce outcomes that may be justified in the relevant contexts.

Appendix I: List of Cases

Canada

Ocean Port Hotel Ltd v British Columbia (General Manager, Liquor Control and Licensing Branch)
2001 SCC 52 (Supreme Court of Canada (SCC))

Re Ashby (1934) OR 421,

Shell Co. of Australia v Federal Commissioner of Taxation [1931] AC 275

India

Sugar Mills v. Lakshmi Chand, AID 1963 SC 677

United Kingdom

Buras v. Board of Trustees, 367 So. 2d 849, 853 (La. 1979)

Cook v Financial Insurance Co [1998] 1 WLR 1765

First Energy (UK) Ltd v Hungarian International Bank, Ltd [1993] 2 Lloyds Rep 194

Gillies v. Work and Pensions Secretary (Scotland) [2006] UKHL 2

In Re Pyser and Mills' Arbitration [1964] 2 QB 467

Metropolitan Properties Ltd v. Lannon [1969] 1 QB 577

R v. Secretary of State for the Home Department ex p Saleem [2001] WLR 443

United States

Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc. (1984) 467 U.S. 837 (1984)

New York v Federal Energy Regulatory Commission, 535 US 1 (2002)

Phillips v Lincoln National Life Insurance Co, 978 F.2d 302 (7th Cir. 1992)

Th Kingdom of Saudi Arabia

Al-Ahlia Cooperative Insurance Company v The Committee for the Settlement of Insurance Dispute,
Board of Grievances, Circle Seven Decision No. 157/D/A/7, Case No. K/1/35 (2008)

Case No. 261154, Riyadh Primary Committee, Decision No. 1429-44

Case No. 290773, Riyadh Primary Committee, Decision No. 1432-4

Case No. 300734, Riyadh Primary Committee, Decision No. Case No. 261154

Case No. 301101, Riyadh Primary Committee, Decision No. 1429-67

Case No. 360310, Riyadh Primary Committee, Decision No. 276/T/1436 AH

Case No. 330440, Riyadh Primary Committee, Decision No. 1433-210

Case No. 360134, Riyadh Primary Committee, Decision No. 323/R/1436 AH

Case No. 360714, Jeddah Primary Committee, Decision No. 343/C/1436 AH

Case No. 320247, Riyadh Primary Committee, Decision No. 21/T/1437 AH

Case No. 361263, Dammam Primary Committee, Decision No. 259/D/1436 AH

Case No. 370207, Dammam Committee, Decision No. 83/D/1437 AH

Commercial Case No. 270/TG/1 1434H, Date of hearing July 14, 2013 (Court of Appeal)

Jadawel International (Saudi Arabia) v Emaar Property PJSC (UAE) ICC (2006)

Saudi Arabia v Arabian American Oil Co (ARAMCO), ad hoc award, 27 ILR 117 (1963)

Decisions of the Board of Grievances

Appeal No. 1228/AS/6 Year 1431H. Case Number 3/1136 Year 1430; Initial case Number 27/D/1/15 Year 1431H. Date of the hearing: 2/12/1431H

Appeal No. S/23973 Year 1436. Initial case No. Q/2/7402 Year 1432. Date of the court hearing: 19/9/1436

Appeal No. S/2/324 Year 1432H. Initial case No. Q/2/2886 Year 1427H. Date of the court hearing: 4/12/1434H

Appeal No. S/2/2713 Year 1435H. Initial case No. 2887 Year 1433H. Date of the court hearing: 8/6/1435H

Appeal No. 3/AS/695 Year 1431H. Initial case No: Q/3/976 Year 1429H. Date of the court hearing: 19/9/1431H

Appeal No. 3/AS/361 Year 1430H. Initial case No. Q/3/489 Year 1427H. Date of the court hearing: 12/11/1430H

Appeal No. 3/T/141 Year 1407H. Initial case No. Q/1/488 Year 1405H. Date of the court hearing: 2/11/1407H

Appeal No. Q/7138 Year 1432H. Initial case No: Q/1/1431H Year 1431H. Date of the court hearing: 4/5/1433H

Circle Seven Decision No. 157/D/A/7, Case No. K/1/35 (2008)

Summary of IDC Decisions on Motor Insurance Disputes

Decisions in 2007

Case No	Value	How long take	How resolved	Did claimant	What was amount	Claimant	Reason for decision

				receive a settlement			
261187	181,500	7 years	appealed	Yes	141,000	Policyholder	Compensated because his car was stolen
280418	14,500	6 months	Primary	Yes	7,275	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
250036	69,166	7 months	Primary	Yes	25,000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
280454	75,000	2 years	Primary	Yes	75,000	Policyholder	Adverse determination by insurer
261374	100,000	2 years	Primary	Yes	100,000	Policyholder	Adverse determination by insurer
250106	300,000	4 years	Dismissed	No	N/A	Policyholder	Because the condition of compensation for death was not included
250071	90,000	6 months	Dismissed	No	N/A	Policyholder	Did not attend
270037	13,000	6 years	Primary	Yes	7,500	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
260273	35,000	6 years	Appealed	Yes	35,000	Policyholder	Adverse determination by insurer
250006	500,000	8 months	Primary	Yes	400,000	Policyholder	IDC rejected to compensate 100,000 for expenses
273427	45,500	6 months	Primary	Yes	25,000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money

Decisions in 2008

Case No	Value	How long take	How resolved	Did claimant receive a settlement	What was amount	Claimant	Reason for decision
260425	38,606	4 months	primary	Yes	34,000	Policyholder	Defendant did not turn up

290206	50,000	8 months	Dismissed	no	N/A	Policyholder	Because this kind of damage was not included in policy
270116	126,000	1 year 7 months	Primary	Yes	73,000	Policyholder	IDC compensated for car damage only and rejected the treatment expenses related to the accident
270475	12,000	2 years	Primary	Yes	6,000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
280316	14,000	1 years	Primary	Yes	9000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
280339	120,000	8month	primary	yes	20,000	Policyholder	Because the accident did not happen in the coverage period
260022	370,000	1 year 6 months	primary	Yes	209,000	Policyholder	Some claims not included in the policy
250008	100,000	5 years	Primary	Yes	100,000	Policyholder	Death penalty
270296	106,000	7 years	Appealed	Yes	33,000	Policyholder	Some claims not covered in policy

Decisions in 2009

Case No	Value	How long take	How resolved	Did claimant receive a settlement	What was amount	Claimant	Reason for decision
270500	300.000	2 year	Appeal	Yes	100.000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
290705	34.000	8 months	Dismissed	no	N/A	Policyholder	Because this kind of damage not included in policy
280188	11.000	6 months	Primary	Yes	19.000	Policyholder	IDC compensated for car damage and legal expenses
290829	6000	1 years	Primary	Yes	7000	Policyholder	for car damage and legal expenses
290774	42.900	1 years	Dismissed	No		Policyholder	Because this kind of damage not included in policy

Decisions in 2010

Case No	Value	How long take	How resolved	Did claimant receive a settlement	What was amount	Claimant	Reason for decision
295220	11.460	8 months	primary	Yes	11460	Policyholder	For car damage according to the insurance contract with insurer
293895	700	6 months	primary	Yes	700	Policyholder	For car damage according to the insurance contract with insurer
310616	3.390	6 months	Primary	Yes	3390	Policyholder	For car damage according to the insurance contract with insurer
294018	10.300	3 months	Primary	Yes	10.300	Policyholder	For car damage according to the insurance contract with insurer
294583	8.600	6 months	Primary	Yes	8600	Policyholder	For car damage according to the insurance contract with insurer
300582	8000	8month	primary	yes	4500	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
393381	17.000	1 year	primary	Yes	17.000	Policyholder	For car damage according to the insurance contract with insurer
394681	4.800	1 year	Primary	Yes	4800	Policyholder	For car damage according to the insurance contract with insurer
295170	11.600	8 months	Primary	Yes	11600	Policyholder	For car damage according to the insurance contract with insurer
295205	6500	6 months	Primary	Yes	6500	Policyholder	For car damage according to the insurance contract with insurer
294824	2000	8 months	Primary	yes	2000	Policyholder	For car damage according to the insurance contract with insurer

Decisions in 2011

Case No	Value	How long take	How resolved	Did claimant receive a settlement	What was amount	Claimant	Reason for decision
310818	62.700	1 year	primary	Yes	62.700	Policyholder	For car damage according to the insurance contract with insurer
291072	36.500	1 year 3 months	primary	Yes	36.500	Policyholder	For car damage according to the insurance contract with insurer

320075	50.000	2 years	Primary	Yes	35.000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
321888	13.000	8 months	Primary	Yes	13.000	Policyholder	For car damage according to the insurance contract with insurer
320464	30.000	1 year	Primary	Dismissed	N/A	Policyholder	Because this kind of damage not included in policy
320144	300.000	1 year	primary	yes	100.000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
324511	25.000	1 year	primary	Yes	25.000	Policyholder	For car damage according to the insurance contract with insurer
326654	35.000	6 months	Primary	Yes	20.000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money

Decisions in 2012

Case No	Value	How long take	How resolved	Did claimant receive a settlement	What was amount	Claimant	Reason for decision
321797	63.500	2 year	primary	Yes	63.500	Policyholder	For car damage according to the insurance contract with insurer
321782	29.700	2 years	primary	Yes	29.700	Policyholder	For car damage according to the insurance contract with insurer
330276	6500	1 year 6 months	Primary	Yes	12.000	Policyholder	For delay in fixing the car
321992	300.000	2 year	Dismissed	No	No	Policyholder	On the basis of IDC is not the competence court for this kind of claim
321955	3700	1 year	Primary	Yes	1700	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
3211956	7700	1 year	primary	yes	5500	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
321995	3390	1 year 6 months	primary	Yes	1.300	Policyholder	Claimant agreed to get this amount and close the

							case ASAP because he is in desperate need of money
330364	20.000	8 months	Primary	Yes	17.000	Policyholder	For car damage only, the rest of claim was not included in contract
321997	400.00	2 years	Primary	Yes	200.000	policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
321835	9000	8 months	Primary	Dismissed	No	Policyholder	On the basis of IDC is not the competence court for this kind of claim
321697	190.000	1 year	Dismissed	Dismissed			On the basis of IDC is not the competence court for this kind of claim
290337	120.000	8 months	Primary	Dismissed	No	Policyholder	On the basis of IDC is not the competence court for this kind of claim

Decisions in 2013

Case No	Value	How long take	How resolved	Did claimant receive a settlement	What was amount	Claimant	Reason for decision
330764	150.000	1 year 6 months	Primary	Yes	70.000	Policyholder	According to the conditions of the insurance contract
340064	140.000	2 years	primary	Yes	50.000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
331426	65.000	1 year	Primary	Yes	20.000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
340315	30.000	8 months	Primary	yes	30.000	Policyholder	For car damage according to the insurance contract with insurer
340008	81.000	2 year	Primary	Yes	40.000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
330921	40.600	1 year	primary	yes	23.000	Policyholder	For car damage only. The rest of claims were not included in the insurance contract
330412	55.000	2 year	Dismissed	No	No	Policyholder	Policyholder did not turn up in the hearing

331704	11.000	8 months	Dismissed	No	No	Policyholder	Because this kind of damage not included in policy
331242	30.000	2 years	Dismissed	no	no	policyholder	Because this kind of damage not included in policy
340037	58.000	2 year	Appeal	Yes	58.000	Policyholder	For car damage according to the insurance contract with insurer
340276	25.000	1 year	Primary	yes	13.000		Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
331051	4500	2 year	Primary	Yes	4500	Policyholder	For car damage according to the insurance contract with insurer
340324	19.500	8 months	Primary	Yes	10.000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money

Decisions in 2014

Case No	Value	How long take	How resolved	Did claimant receive a settlement	What was amount	Claimant	Reason for decision
341509	25.000	1 year	Primary	Yes	25000	Policyholder	For car damage according to the insurance contract with insurer
340975	145.000	2 years	primary	Yes	145.000	Policyholder	For car damage according to the insurance contract with insurer
342260	80.000	1 year 3 months	Dismissed	no	No	Policyholder	Because this kind of damage not included in policy
342083	69.000	8 months	Dismissed	no	no	Policyholder	Policyholder did not turn up in the hearing
341904	300.000	1 year	Primary	Yes	200.000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
341406	20.000	1 year	primary	yes	15.000	Policyholder	For car damage only. The rest of claims were not included in the insurance contract
331818	320.000	2 year	primary	yes	100.000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money

342163	27500	1 year 3 months	Dismissed	No	No	Policyholder	Because this kind of damage not included in policy
342405	50.000	1 years	Dismissed	no	no	policyholder	Because this kind of damage not included in policy

Decisions in 2015

Case No	Value	How long take	How resolved	Did claimant receive a settlement	What was amount	Claimant	Reason for decision
350773	50.000	6 months	Primary	No	Dismissed	Policyholder	Because this kind of damage not included in policy
350594	8000	8 months	primary	No	Dismissed	Policyholder	Because this kind of damage not included in policy
350761	75.000	6 months	Dismissed	no	No	Policyholder	Policyholder did not turn up at the hearing
350135	100.000	1 year	Primary	Yes	100.000	Policyholder	For car damage according to the insurance contract with insurer
350194	213.000	1 year	Primary	Yes	213.000	Policyholder	For car damage according to the insurance contract with insurer
350518	63.000	1 year	primary	yes	70.000	Policyholder	For car damage only plus compensation for delay in settling this claim
350270	23.000	8 months	primary	yes	10.000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is in desperate need of money
350547	53000	6 months	Dismissed	No	No	Policyholder	Because this kind of damage not included in policy
360210	45.000	1 years	Appeal	Yes	Yes	policyholder	For car damage according to the insurance contract with insurer
350460	100.000	9 months	Primary	No	Dismissed	Policyholder	Policyholder did not turn up at the hearing
350489	75.000	1 year	Primary	No	Dismissed	policyholder	Policyholder did not turn up at the hearing

Decisions in 2016

Case No	Value	How long take	How resolved	Did claimant receive a settlement	What was amount	Claimant	Reason for decision
370211	31.000	1 year	Primary	Yes	25000	Policyholder	Policyholder agreed to get this amount and close the case ASAP because he is in desperate need of money
360755	204.000	1 years	Appeal	Yes	204.000	Policyholder	Penalty for death according to the insurance contract with insurer
360582	645.000	2 year	Appeal	Yes	80.000	Policyholder	Policyholder has been compensated for only which included in contract
370906	85.000	8 months	Dismissed	no	no	Policyholder	This claim has already been settled before case registered
371093	12000	1 year	Primary	No	Dismissed	Policyholder	Policyholder did not turn up at hearing
370937	13700	1 year	primary	yes	14500	Policyholder	For car damage according to insurance contract plus compensation for delay in settling this claim
370933	100.000	8 months	Appeal	yes	100.000	Policyholder	For car damage according to their insurance contract
361394	780.000	2 year	Appeal	No	Dismissed	Policyholder	Because this kind of damage not included in policy

Decisions in 2017

Case No	Value	How long take	How resolved	Did claimant receive a settlement	What was amount	Claimant	Reason for decision
370844	10.000	1 year	primary	Yes	10.000	Policyholder	For car damage according to the insurance contract with insurer
370347	350.000	1 year 3 months	Appeal	No	Dismissed	Policyholder	Because this kind of damage not included in the contract
380051	103.000	8 months	Primary	Yes	88.000	Policyholder	Claimant agreed to get this amount and close the case ASAP because he is

							in desperate need of money
371189	72.000	1 year	Primary	Yes	72.000	Policyholder	For car damage according to the insurance contract with insurer
371685	100.000	1 year 2 months	Appeal	Yes	100.000	Policyholder	Death penalty caused by car accident.
380149	188.000	2 year	Appeal	yes	208.000	Policyholder	For car damage according to the insurance contract with insurer plus legal expenses

Appendix II: Questionnaire on Insurance Dispute Resolution by the Insurance Dispute Committee in the Kingdom of Saudi Arabia

Questionnaire Addressed to Members (adjudicators) of the IDC

Information for Participants/Consent Form

Dear Participant,

You are invited to take part in a study that seeks to determine whether the Saudi legislator is justified in requiring all claimants to submit insurance coverage disputes to the Insurance Dispute Committee (IDC), as well as whether there is a more effective dispute resolution option.

I would be grateful if you complete this Questionnaire on your experience as an IDC adjudicator. This research is part of a PhD thesis at the University.

Before you decide whether to take part in the study, it is important that you understand what the research is for and what you will be asked to do. Please take time to read the following information. You have to decide whether or not to take part in light of this information. If you decide to take part, you will be asked to sign a consent form. You can change your mind and withdraw from the study without giving any reason before FRIDAY 27 September 2019. Also, providing your name in Part I is optional. Your personal information will be used for identification purposes only and no identifying information will be disclosed at any stage of this study. The participant will not be identified in any part of this study as the responses will be coded.

If the researcher does not receive a completed questionnaire two weeks after the date on which the questionnaire was sent to you, it would be assumed that you have withdrawn from the study. The standard of care you receive will not change regardless of your decision to participate in this study or not. Please call or send an email if you would like any clarification or further information.

The focus of the research is on disputes related to coverage determinations - where the insurance company arbitrarily refuses to pay the policyholder/consumer. It therefore seeks to determine the best option available to the consumer who is in desperate need of money following a loss/accident. I would like to ask questions about your experience as an adjudicator and steps undertaken to protect consumers.

Analyses of the relevant statutes and surveys of users of the IDC reveal that there is a disjunction between doctrine and practice. The doctrinal analysis shows that the IDC has

serious flaws when compared to other options such as arbitration. However, the analysis of surveys of users of the IDC shows that in practice most consumers are satisfied with the IDC.

The information that you provide will help to explain the disjunction between the doctrine and practice. The objective is to determine whether adjudicators adopt measures (not specified in any law or guidelines) to protect consumers. The results of the research may also lead onto further studies on insurance coverage dispute resolution in Islamic societies.

This Questionnaire will be stored in a locked secure place at all times and the data will be protected from intrusion. The Questionnaire will be destroyed at the end of this study. Your answers will be treated with full confidentiality, and you will be identified only by a code number or false name. I will analyse the Questionnaire. At the end of the study, I will show and discuss your answers (without any name acknowledged) in my dissertation. The results of this study may subsequently be published in peer reviewed journals or discussed in conference papers. You can request a copy of the final report if you wish. No participant will be identifiable from any publication or presentation.

This study has been reviewed and approved by the Research Ethics Committee at the University. This University is a public research institution with insurance in place to provide indemnity for loss due to legal liabilities to members of the public in respect of this study. The ethical review application number of this study is ER/AA.

Please send the completed Questionnaire to the researcher's email address below and do not hesitate to contact me if you need further information.

Thanking you in anticipation

Yours sincerely,

SIGNATURE

I have read this consent form and my questions have been answered. My signature below means that I know that I can remove myself from the study at any time before FRIDAY 27 September 2019 without any problems.

Subject

Date

This Questionnaire has three parts:

Part I requests basic information about you

Part II asks for information concerning your experience at the IDC

Part III asks for your thoughts on the experience of parties

Part I: General and Background Information

1. Respondent's Name: _____
2. Age range:
 - ☐ 25-45
 - ☐ 46-66
 - ☐ Above 66
3. What is your gender? _____
4. Please identify the Committee on which you serve: _____
5. Please indicate the level of the last education qualification obtained:
 - ☐ High School Diploma
 - ☐ Bachelor's Degree
 - ☐ Master's Degree
 - ☐ Doctorate
 - ☐ Other (Please specify): _____
6. How long have you served as a Member of the IDC?
 - ☐ Less than three (3) years
 - ☐ Three (3) to five (5) years
 - ☐ More than five (5) years

7. How long have you worked as an adjudicator?
- ☐ Less than five (5) years
 - ☐ More than five (5) but less than ten (10) years
 - ☐ More than ten (10) but less than fifteen (15) years
 - ☐ More than fifteen (15) years
8. Do you have any experience working as an arbitrator, negotiator or mediator in an insurance-related dispute?
- ☐ Yes
 - ☐ No
9. Did you serve as a judge in the Islamic Court when it handled insurance litigation?
- ☐ Yes
 - ☐ No

Part II: Experience of Dispute Resolution at the IDC

10. What is your opinion of the IDC as a dispute resolution body?

- ☐ Very positive
- ☐ Positive
- ☐ Neutral
- ☐ Negative
- ☐ Very negative

11. Please, explain your answer in ten (10) above.

12. What is your opinion of the Board of Grievances as an insurance dispute resolution body?

- ☐ Very positive
- ☐ Positive
- ☐ Neutral
- ☐ Negative
- ☐ Very negative

13. Please, explain your answer in twelve (12) above.

14. What is your opinion of arbitration, negotiation and mediation as insurance dispute resolution options?

- ☐ Very positive
- ☐ Positive
- ☐ Neutral
- ☐ Negative
- ☐ Very negative

15. Please, explain your answer in fourteen (14) above.

16. Based on your experience and opinion on what would be fairest to consumers, do you oppose or support the requirement to submit all insurance-related disputes to the IDC?

- ☐ Strongly support
- ☐ Moderately support
- ☐ Moderately oppose
- ☐ Strongly oppose
- ☐ I cannot say

17. Please explain your answer in sixteen (16) above

18. Is there any hierarchy or priority of sources of law when applying precedent?

19. Are you required to provide a well-reasoned explanation of the law applied and demonstrate the route taken to reach your conclusions?

20. Is there any guidance on a timeframe within which a case must be concluded?

21. How important are moral/religious preferences and policy considerations in deciding cases?

22. Do you consider the conscionability of the contractual terms and the reasonable expectation of the parties when deciding cases? Why?

Part III: Your Thoughts on the Experience of Parties

23. Do you think most consumers are satisfied with their experience with the IDC? Why?

24. Do you know of any concerns consumers have with the IDC?

25. Do you think the current substantive and procedural laws allow Committees to address these concerns? Why?

26. Are there any changes you would like implemented?

Thank You

Appendix III: Ethical Review

Section A - Checklist
<p>A1. Will your study involve participants who are particularly vulnerable or unable to give informed consent or in a dependent position (e.g. people under 18, people with learning difficulties, over-researched groups or people in care facilities)?</p> <p>No</p>
<p>A2. Will participants be required to take part in the study without their consent or knowledge at the time (e.g. covert observation of people in non-public places), and / or will deception of any sort be used? Please refer to the British Psychological Society <i>Code of Ethics and Conduct</i> for further information.</p> <p>No</p>
<p>A.3 Will it be possible to link personal data back to individual participants in any way (this does not include identifying participants from signed consent forms or identity encryption spreadsheets that are stored securely separate from research data).</p> <p>No</p>
<p>A4. Might the study induce psychological stress or anxiety, or produce humiliation or cause harm or negative consequences beyond the risks encountered in the everyday life of the participants?</p> <p>No</p>
<p>A5. Will the study involve discussion of sensitive topics (e.g. sexual activity, drug use, ethnicity, political behaviour, potentially illegal activities)?</p> <p>No</p>
<p>A6. Will any drugs, placebos or other substances (such as food substances or vitamins) be administered as part of this study and will any invasive or potentially harmful procedures of any kind will be used?</p> <p>No</p>
<p>A7. Will your project involve working with any substances and / or equipment which may be considered hazardous?</p> <p>No</p>
<p>A.8 Will your study involve the taking and/or storage of human tissue that falls under the Human Tissue Act (HTA)? http://www.sussex.ac.uk/staff/research/governance/erp_overview/humantissue</p> <p>No</p>
<p>A9. Will financial inducements (other than reasonable expenses, compensation for time or a lottery / draw ticket) be offered to participants?</p> <p>No</p>

<p>A10. If you have answered 'Yes' to ANY of the above questions, your application will be considered as HIGH risk. If, however you wish to make a case that your application should be considered as LOW risk please enter the reasons here:</p> <p>N/A</p>
<p>Ethical Review Form B – Low risk research</p>
<p>Data Collection and Analysis (Please provide full details)</p>
<p>B1. PARTICIPANTS: How many people do you envisage will participate, who they are, and how will they be selected?</p> <p>It is expected that there will be twenty-five (25) participants. The participants are members of the Primary Committees of the Insurance Dispute Committee (IDC). The IDC is an administrative tribunal set up in the Kingdom of Saudi Arabia to adjudicate insurance coverage disputes between insurers and policyholders. The members of the Committees are adjudicators in these tribunals. That is the criterion for selection.</p> <p>The selection of participants will therefore be purposive. The objective will be to ensure representation of important elements of the research question regarding the dispute resolution option that best promotes the interests of consumers in the Kingdom of Saudi Arabia.</p> <p>The sampling strategy will be purposive sampling, and the type of purposive sampling that will be employed will be snowball purposive sampling. As such, the participants will be selected based on a pre-selected criterion: membership of an IDC Committee. The researcher will also rely on chain referral or snowball, whereby some participants will refer the researcher to others who may be able to potentially contribute.</p> <p>The sample frame will comprise fifty (50) members of the Committees in Riyadh, Jeddah and Dammam. The sample size will be increased by 100% to compensate for potential nonresponses. However, the sample size will be based on theoretical saturation. Thus, the researcher will include participants until the point where new participants will no longer provide additional insights. Nonetheless, it is unlikely that more than 25 participants accept to participate.</p>
<p>B2. RECRUITMENT: How will participants be approached and recruited?</p> <p>The researcher will obtain their contact details from the General Secretariat of the IDC. Emails will be sent to the participants and then followed up by calls that will be made to the participants to discuss the project. Given the use of snowball or chain referral sampling, some participants will be referred to the researcher by other participants who have already accepted to be part of the study. This will help the researcher recruit participants that may be otherwise hard to reach.</p>
<p>B3. METHOD: What research method(s) do you plan to use; e.g. interview, questionnaire/self-completion questionnaire, field observation, audio/audio-visual recording?</p> <p>Self-completion questionnaire.</p> <p>The use of self-completion questionnaires will ensure that the data collected helps in answering the question regarding the most effective dispute resolution option for insurance coverage disputes involving consumers. The research design will be</p>

qualitative. The qualitative research methodology will be the grounded theory. Hence, the researcher will collect and code data, make the relevant connections, and develop theories that are grounded in the data. The new theories will enable the researcher to approach the question of the most effective dispute resolution in a different way.

The participants will be required to complete the questionnaires and return them to the researcher by email. This is the fastest way of getting information from the participants within the time available for this study. Each participant will be required to complete a single questionnaire. They will not be required to answer questions for which they are not able to provide specific detailed answers. This is because the researcher will rely on the answers provided by the participants to develop new theories. Thus, the answers have to be reliable.

The data will be analysed as they are collected. They will be examined for content immediately following collection.

B4. LOCATION: Where will the project be carried out e.g. public place, in researcher's office, in private office at organisation?

The project will be carried out in the researcher's office.

Confidentiality and Anonymity

B5. Will questionnaires be completed anonymously and returned indirectly?

They will be completed anonymously but returned directly to the researcher.

B6. Will data only be identifiable by a unique identifier (e.g. code/pseudonym)?

Yes. The codes will include: Judge #1, Judge #2, Judge #3 etc

B7. Will lists of identity numbers or pseudonyms linked to names and/or addresses be stored securely and separately from the research data?

Yes.

B8. Will all place names and institutions which could lead to the identification of individuals or organisations be changed unless this is consented to explicitly in the consent form?

Yes.

B9. Will all personal information gathered be treated in strict confidence and never disclosed to any third parties?

Yes.

B10. Can you confirm that your research records will be held in accordance with the data protection guidelines? (<http://www.sussex.ac.uk/ogs/policies/information/dpa>)

Yes.

B11. Can you confirm that you will not use the research data for any purpose other than that which consent is given?

Yes. The records will be kept in a form that permits identification of data subjects for no longer than is necessary for the purposes for which they are processed. They will be processed in a manner that ensures appropriate security of the personal data of participants, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage.
Informed Consent and Recruitment of Participants
B12. Will all respondents be given an Information Sheet and be given adequate time to read it before being asked to agree to participate?
Yes.
B13. Will all participants taking part in an interview, focus group, observation (or other activity which is not questionnaire based) be asked to sign a consent form? If you are obtaining consent another way, please explain under 15a below.
Yes, but only questionnaires will be used.
B14. Will all participants self-completing a questionnaire be informed that returning the completed questionnaire implies consent to participate?
Yes, but they will also have to sign a consent form.
B15. Will all respondents be told that they can withdraw at any time during testing and can ask for their data to be destroyed and/or removed from the project until it is no longer practical to do so?
Yes.
B15a If you answered NO to any of the above (or think more information could be useful to the reviewer) please explain here:
N/A
Context
B16. Is DBS (Disclosure and Barring Service) clearance necessary for this project? If yes, please ensure you complete the next question.
No.
B17. Are any other ethical clearances or permissions (internal or external) required? Please see the help text (i) for further details.
No.
B17a. If yes, please give further details including the name and address of the organisation. If other ethical approval has already been received please attach evidence of approval, otherwise you will need to supply it when ready. (You do not need to provide evidence of a current DBS check at this point).
N/A
B18. Does the research involve any fieldwork - Overseas or in the UK?
Overseas.
B18a. If yes, where will the fieldwork take place?

The Kingdom of Saudi Arabia
B19. Will any researchers be in a lone working situation?
No.
B19a. If yes, briefly describe the location, time of day and duration of lone working. What precautionary measures will be taken to ensure safety of the researcher(s)?
N/A
Any further concerns
B20. Are there any other ethical considerations relating to your project which have not been covered above?
No.
B20a. If yes, please explain:
N/A
Ethical Review Form C – High risk research
Participants
C1. Is DBS clearance necessary for this project? If yes, please ensure you complete Section C23a
C2. Are alcoholic drinks, drugs, placebos or other substances (such as food substances or vitamins) to be administered to the study participants?
C3. Can you think of anything else that might be potentially harmful to participants in this research?
C4. Does the project involve working with any substances and/or equipment which may be considered hazardous? (Please refer to the University's Control of Hazardous Substances Policy).
C5. Could the nature or subject of the research potentially have an emotionally disturbing impact on the researcher(s)?
C5a. If yes, briefly describe what measures will be taken to help the researcher (s) manage this
C6. Could the nature or subject of the research potentially expose the researcher(s) to threats of physical violence and / or verbal abuse?
C6a. If yes, briefly describe what measures will be taken to mitigate this.
C7. Does the research involve any fieldwork - Overseas or in the UK?
C7a. If yes, where will the fieldwork take place?
C8. Will any researchers be in a lone working situation?

C8a. If yes, briefly describe the location, time of day and duration of lone working. What precautionary measures will be taken to ensure safety of the researcher(s)?
C9. Can you think of anything else that might be potentially harmful to the researcher(s) in this research?
Data Collection and Analysis (Please provide full details)
C10. PARTICIPANTS: How many people do you envisage will participate, who are they, and how will they be selected?
C11. RECRUITMENT: How will participants be approached and recruited?
C12. METHOD: What research method(s) do you plan to use; e.g. interview, questionnaire/self-completion questionnaire, field observation, audio/audio-visual recording?
C13. LOCATION: Where will the project be carried out e.g. public place, in researcher's office, in private office at organisation?
Ethical Considerations (Please provide full details)
C14. INFORMED CONSENT: Please describe the process you will use to ensure your participants are freely giving fully informed consent to participate. This will usually include the provision of an Information Sheet and will normally require a Consent Form unless there is justification for not doing so. (Please state this clearly).
C15. RIGHT OF WITHDRAWAL: Participants should be able to withdraw from the research at any time. Participants should also be able to withdraw their data if it is linked to them and should be told when this will no longer be possible (e.g. once it has been included in the final report). Please describe the exact arrangements for withdrawal from participation and withdrawal of data for your study.
C16. OTHER ETHICAL ISSUES: If you answered YES to anything in A.1 above you must specifically address this here. Please also consider whether there are other ethical issues you should be covering here. Please also make reference to the professional code of conduct you intend to follow in your research.
Data Protection, Confidentiality, and Records Management
C17. Will you ensure that the processing of personal information related to the study will be in full compliance with the Data Protection Act 1998 (DPA)? (http://www.sussex.ac.uk/ogs/policies/information/dpa)
C17a. If you are processing any personal information outside of the European Economic Area (EEA) you must explain how compliance with the DPA will be ensured.
C18. Will you take steps to ensure the confidentiality of personal information?
C18a. Please provide details of anonymisation procedures and of physical and technical security measures here:

C19. Will all personal information related to this study be retained and shared in a form that is fully anonymised (separated from information that can identify the participant)?
C19a. If you answered "no" to the above question you must ensure that any limitations to full anonymity are detailed in the Information Sheet and that participant consent will be in place. If relevant, please outline limitations here:
C20. Will the Principal Investigator take full responsibility during the study, for ensuring appropriate storage and security of information (including research data, consent forms and administrative records) and, where appropriate, will the necessary arrangements be made in order to process copyright material lawfully?
C20a. If you answered "no" to the above question, please give further details:
C21. Who will have access to personal information relating to this study?
C22. Data management responsibilities after the study. State how long study information including research data, consent forms and personal identification will be retained, in what format(s) and where the information will be kept.
Other Ethical Clearances and Permissions
C23. Are any other ethical clearances or permissions (internal or external) required? Please see the help text (i) for further details
C23a. If yes, please give further details including the name and address of the organisation. If other ethical approval has already been received please attach evidence of approval, otherwise you will need to supply it when ready. (You do not need to provide evidence of a current DBS check at this point).

<http://www.sussex.ac.uk/staff/research/governance/apply>

Bibliography

Books

- Adams A and Cox AL, 'Questionnaires, In-depth Interviews and Focus Groups' in Cairns P and Cox A (eds), *Research Methods for Human Computer Interaction* (Cambridge University Press 2008)
- Ahdab AA, *Arbitration with the Arab Countries* (3rd edn, Wolters Kluwer 2011)
- Al Mallakh R, *Saudi Arabia: Rush to Development* (Routledge 2019)
- Al Samaan YA, *The Legal Protection of Foreign Investment in the Kingdom of Saudi Arabia* (Dar Al Andalus 2000)
- Al Saud RA, *Principles of Insurance* (Arab House 2000)
- Al Tamimi E, *The Practitioner's Guide to Arbitration in the Middle East and North Africa* (Brill 2009)
- Al-Ghamdi M and Neufeld PJ, 'Saudi Arabia' in Taylor D (ed), *Dispute Resolution Review* (9th edn, Law Business Research 2017)
- Al-Obeikan AM, *The Codification of Islamic Shari'ah* (Asharq al-'Awsat 2006)
- Al-Su'ud FM, *Islamic Political Development in the Kingdom of Saudi Arabia; Majlis Ash Shura: Concept, Theory and Practice* (2002)
- Amanat A and Griffel F (eds), *Shari'a: Islamic Law in the Contemporary Context* (Stanford University Press 2009)
- An-Naim AA, *Islamic Family Law in a Changing World: A Global Resource Book* (Zed Books 2002)
- Andrews N, *Arbitration and Contract Law: Common Law Perspectives* (Springer 2016)
- Askari H, Z Iqbal and Mirakhor A, *Introduction to Islamic Economics: Theory and Application* (Wiley 2015)
- Asmat D and Tennyson S, 'The Law and Economics of Insurance Bad Faith Liability' in Schwarz D and Siegelman P (eds), *Research Handbook on the Economics of Insurance Law* (Edward Elgar 2015)
- Ayub M, *Understanding Islamic Finance* (John Wiley & Sons Ltd 2007)
- Baamir AY, *Shari'a Law in Commercial and Banking Arbitration: Law and Practice in Saudi Arabia* (2010)
- Bailey J, *Construction Law* (2nd edn, Informa Law 2016)
- Bennett H, *The Law of Marine Insurance* (2nd edn, Oxford University Press 2006)
- Bentham J, *An Introduction to the Principles of Morals and Legislation* (Hafner Publishing 1948)
- Bentz VM and Shapiro JJ, *Mindful Equity in Social Research* (Sage 1998)
- Bernard HR, *Research Methods in Anthropology: Qualitative and Quantitative Approaches* (3rd edn, Alta Mira Press 2002)
- Blackaby N and Partasides C, *Redfern and Hunter on International Arbitration* (6th edn, Kluwer Law International 2015)
- Boivin D, *Insurance Law* (Irwin Law 2004)
- Born P, 'Financial Consumer Protection in the United States' in Chen T (ed), *An International Comparison of Financial Consumer Protection* (Springer 2018)

- Born G, *International Arbitration: Law and Practice* (Wolters Kluwer, 2012)
- Botes JH, *From Good Faith to Utmost Good Faith in Marine Insurance* (Peter Lang 2006)
- Brand O, 'Contract Terms: Judicial Approaches to the Interpretation of Insurance Contracts' in Burling J and Lazarus K (eds), *Research Handbook on International Insurance Law and Regulation* (Edward Elgar 2011)
- Brealey RA et al, *Principles of Corporate Finance* (8th edn, S&P Global 2006)
- Burke DB, *Law of Title Insurance* (3rd edn, Wolters Kluwer 2018)
- Cane P, *Administrative Tribunals and Adjudication* (Hart Publishing 2009)
- Cane P, 'Judicial Review and Merits Review: Comparing Administrative Adjudication by Courts and Tribunals' in Rose-Ackerman S and Lindseth PL (eds), *Comparative Administrative Law* (Edward Elgar 2010)
- Carbonneau TE, *Cases and Materials: Arbitration Law and Practice* (6th edn, West 2007)
- Carbonneau TE, *The Law and Practice of Arbitration* (6th edn, Juris 2018)
- Carper D, McKinsey J and West BW, *Understanding the Law* (5th edn, Thomson West 2008)
- Coffey A and Atkinson P, *Making Sense of Qualitative Data: Complementary Research Strategies* (Sage 1996)
- Constantino C and Merchant CS, *Designing Management Systems: A Guide to Creating Productive and Healthy Organizations* (Jossey-Bass 1996)
- Coulson NJ, *Commercial Law in Gulf States: The Islamic Legal Tradition* (Graham and Trotman, 1984)
- Courtney W, *Contractual Indemnities* (Hart Publishing 2014)
- Creswell JW, *Educational Research: Planning, Conducting, and Evaluating Quantitative and Qualitative Research* (4th edn, Pearson 2012)
- Creswell JW, *Research Design: Qualitative, Quantitative and Mixed Approaches* (Sage 2009)
- Dahlan AH, *Dirasa Fi Al-Siyyasah Al-Dakhiliyyah Li-Al-Mamlakah Al-Arabiyyah Al-Sa'udiyyah [A Study in the Internal Politics of the Kingdom of Saudi Arabia]* (1984)
- DeLong-Bas NJ, *Wahhabi Islam: From Revival and Reform to Global Jihad* (Oxford University Press 2004)
- Dillman DA, Smyth JD and Christian LM, *Internet, Phone, Mail, and Mixed-Mode Surveys: The Tailored Design Method* (John Wiley & Sons 2014)
- Dobias P, 'The Distinctive Features of Independence and Impartiality of Arbitrators in Insurance Matters' in Belohlavek A and Rozehnalova N (eds), *Independence and Impartiality of Arbitrators – Czech (& Central European) Yearbook of Arbitration* (Juris Publishing 2014)
- Dumholdt E, *Rehabilitation Research: Principles and Application* (Elsevier Saunders 2005)
- El Sheikh FRA, *The Legal Regime of Foreign Private Investment in Sudan and Saudi Arabia* (2nd edn, Cambridge University Press 2003)
- El-Ahdab AH and El-Ahdab J, *Arbitration with the Arab Countries* (3rd edn, Kluwer Law International 2011)
- Elliott M and Thomas R, *Public Law* (3rd edn, Oxford University Press 2011)
- Emon AM, *Islamic Natural Law Theories* (Oxford University Press 2010)

- Endicott T, *Administrative Law* (3rd edn, Oxford University Press 2015)
- Evans JM et al, *Administrative Law* (4th edn, Emond Montgomery 1995)
- Fuller LL and Winston K, *The Principles of Social Order: Selected Essays of Lon Fuller* (Duke University Press 1981)
- Gaillard E and Savage J (eds), *Fourchard, Gaillard, Goldman on International Commercial Arbitration* (Kluwer Law International 1999)
- Glaser BG and Strauss AL, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Aldine 1967)
- Goldberg SB, Sander FEA and Rogers N, *Dispute Resolution: Negotiation, Mediation and Other Processes* (Little Brown & Co 1992)
- Goldberg S, Sander FEA and Rogers NH, *Dispute Resolution: Negotiation, Mediation and Other Processes* (4th edn, Little Brown 2003)
- Gonulal SO (ed) *Takaful and Mutual Insurance: Alternative Approaches to Managing Risks* (The World Bank 2013)
- Gopin M, *Holy War, Holy Peace: How Religion Can Bring Peace to the Middle East* (Oxford University Press 2002)
- Hamburger P, *Is Administrative Law Lawful?* (University of Chicago Press 2014)
- Hassan K and Lewis M, *Handbook of Islamic Banking* (Edward Elgar Publishing Limited, 2007)
- Hawke N and Parpworth N, *Introduction to Administrative Law* (Cavendish Publishing 1996)
- Hill H, Roche G and Allen R, *Customer Satisfaction* (Cogent 2007)
- Holmes EM, *Holmes' Appleman on Insurance Law* (2nd edn, LexisNexis 1996)
- Holmes EM and Appleman JA, *Holmes' Appleman on Insurance* (Lexis Law 1996)
- Holt CM, *A Treatise on the Insurance Law of Canada, Embracing Fire, Life, Accident, Guarantee, Mutual Benefit, etc., with an Analysis of the Jurisprudence and of the Statute Law of the Dominion* (C Theoret 1898)
- Hycner RH, 'Some Guidelines for the Phenomenological Analysis of Interview Data' in Bryman A and Burgess RG (eds), *Qualitative Research* (Vol 3, Sage 1999)
- Irani GE, 'Apologies and Reconciliation: Middle Eastern Rituals' in Barkan E and Karn A (eds), *Taking Wrongs Seriously: Apologies and Reconciliation* (Stanford University Press 2006)
- Jarvin S, 'The Sources and Limits of the Arbitrator's Powers' in Lew JM (ed), *Contemporary Problems in International Arbitration* (Springer 1987)
- Jerry RH, *Understanding Insurance Law* (2nd edn, LexisNexis 2012)
- Johnson B and Christensen L, *Educational Research: Quantitative, Qualitative, and Mixed Approaches* (4th edn, SAGE 2012)
- Karim SA (ed), *The Islamic Moral Economy: A Study of Islamic Money and Financial Instruments* (Brown Walker Press 2010)
- Kaufman S and Duncan GT, 'Third Party Intervention: A Theoretical Framework' in MA Rahim (ed), *Managing Conflict in Organisations* (Praeger 1989)
- Keeton RE and Widiss A, *Insurance Law* (West Publishing 1988)

- Kevelson R, *Charles S. Pierce's Method of Methods* (John Benjamin's Publishing 1986)
- Khadduri M, *War and Peace in the Law of Islam* (The Lawbook Exchange 1995)
- Khan MA, *Islamic State and Consumer Protection* (Grin-verlag 2011)
- Khorshid A, *Islamic Insurance: A Modern Approach to Islamic Banking* (RoutledgeCurzon 2004)
- Klein RW, 'Principles of Insurance Regulation: An Evaluation of Current Practices and Potential Reforms' (2012) 37(1) *The Geneva Papers on Risk and Insurance – Issues and Practice* 175
- Korkunov NM, *General Theory of Law* (MG Hastings, Tr, 2nd edn, Macmillan 1922)
- Kovach KK, *Mediation: Principles and Practice* (3rd edn, Thomson West 2004)
- Kulakowski EC and Chronister LU, *Research Administration and Management* (Jones and Bartlett 2006)
- Lauer Q, *Phenomenology: Its Genesis and Prospects* (Harper 1958)
- Lew JDM, Mistellis LA and Kroll SM, *Comparative International Commercial Arbitration* (Kluwer Law International 2003)
- Llewellyn K, *The Common Law Tradition: Deciding Appeals* (Little Brown & Co 1960)
- MacFarlane J, *The New Lawyer: How Settlement is Transforming the Practice of Law* (UBC Press 2008)
- Meador DJ and Bernstein JS, *Appellate Courts in the United States* (West Publishing 1994)
- Merton R, *Colinvaux's Law of Insurance* (11th edn, Sweet and Maxwell 2017)
- MacNaughton HM, 'Future Directions for Administrative Tribunals: Canadian Administrative Justice – Where Do We Go from Here?' in Creyke R (ed), *Tribunals in the Common Law World* (Federation Press 2008)
- Manjoo F (ed), *Risk Management: A Takaful Perspective* (Ed Alnoor, 2007)
- McConville M and Chu WH, 'Introduction and Overview' in McConville M and Chu WH (eds), *Research Methods for Law* (Edinburgh University Press 2007)
- Menkel-Meadow C, *Dispute Processing and Conflict Resolution: Theory, Practice, and Policy* (Ashgate 2003)
- Menkel-Meadow C, 'Regulation of Dispute Resolution in the United States of America: From the Formal to the Informal to the "Semi-final"' in Steffek F et al (eds), *Regulating Dispute Resolution: ADR and Access to Justice at the Crossroads* (Hart 2013)
- Menkel-Meadow C, Love LP and Schneider AK, *Dispute Resolution: Beyond the Adversarial Model* (Aspen 2005)
- Miles MB and Huberman AM, *Qualitative Data Analysis: An Expanded Sourcebook* (2nd edn, Sage 1994)
- Miller WL and Crabtree BF, 'Primary Care Research: A Multimethod Typology and Qualitative Road Map' in Crabtree BF and Miller WL (eds), *Doing Qualitative Research: Research Methods for Primary Care* (Sage 1992)
- Moses ML, *The Principles and Practice of International Commercial Arbitration* (2nd edn, Cambridge University Press 2012)

- Mullady RG, 'Considerations in the Management and Defence of Pharmaceutical Litigation in the United States' in Howells GG (ed), *Product Liability, Insurance and the Pharmaceutical Industry: An Anglo-American Comparison* (Manchester University Press 1991)
- Murphy MC, 'Natural Law, Consent and Political Obligation' in Paul EF et al (eds), *Natural Law and Modern Moral Philosophy* (Cambridge University Press 2001)
- Murtaza N and Fatima U, 'Financial Crimes in Perspective of Public Policy and Islamic Law: Case of Pakistan' in Mutum DS, Butt MM and Rashid M (eds), *Advances in Islamic Finance, Marketing and Management* (Emerald 2016)
- Nasir JJ, *The Islamic Law of Personal Status* (2nd edn, Graham and Trotman 1990)
- Noussia K, *Confidentiality in International Commercial Arbitration: A Comparative Analysis of the Position under English, US, German and French Law* (Springer 2010)
- Patton MQ, *Qualitative Research and Evaluation Methods* (3rd edn, Sage 2002)
- Pearce P, Campbell E and Harding D, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Service 1987)
- Poudret J and Besson S, *Comparative Law of International Arbitration* (2nd edn, Sweet & Maxwell 2007)
- Ramady MA, *The Saudi Arabia Economy: Policies, Achievement, and Challenges* (2nd edn, Springer 2010)
- Ramsden P, *Law of Arbitration* (Juta 2009)
- Redfern A and Hunter M, *Redfern and Hunter on International Arbitration* (5th edn, Oxford University Press, 2009)
- Riskin LL et al, *Dispute Resolution and Lawyers* (3rd edn, West Publishing Co 2005)
- Saleh S, *Commercial Arbitration in the Arab Middle East: A Study in Sharia and Statute Law* (2nd edn, Graham & Trotman 2006)
- Seyadi RM, *The Effect of the 1958 New York Convention on the Foreign Arbitral Awards in the Arab Gulf States* (Cambridge Scholars Publishing 2017)
- Schacht J, *An Introduction to Islamic Law* (Clarendon Press 1964)
- Schacht J, 'Pre-Islamic Background and Early Development of Jurisprudence' in Khadduri M and Liebesny HJ (eds), *Law in the Middle East: Origin and Development of Islamic Law* (Vol. 1, Lawbook Exchange 2008)
- Schoon N, *Islamic Banking and Finance* (Spiramus Press 2009)
- Schwartz MH, GF Hess and SM Sparrow, *What the Best Law Teachers Do* (Harvard University Press 2013)
- Sheldon HN, *The Law of Subrogation* (John Wilson and Son 1882)
- Stebbing C, *Legal Foundations of Tribunals in Nineteenth Century England* (Cambridge University Press 2006)
- Stempel JW and Knusten ES, *Stempel and Knutsen on Insurance Coverage* (4th edn, Wolters Kluwer 2019)
- Stone KVV, *Private Justice: The Law of Alternative Dispute Resolution* (Foundation Press 2000)
- Strauss AL and Corbin JM, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (2nd edn, Sage 1998)

Thomas R, 'From "Adversarial v Inquisitorial" to "Active, Enabling, and Investigative": Developments in UK Administrative Tribunals' in Jacobs L and Baglay S, *The Nature of Inquisitorial Processes in Administrative Regimes* (Routledge 2013)

Twining W, *Karl Llewellyn and the Realist Movement* (2nd edn, Cambridge University Press 2012)

Tyler TR and Huo YJ, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (Russell Sage Foundation 2002)

Ury W, Brett JM and Goldberg SB, *Getting Disputes Resolved: Designing Systems to Cut the Cost of Conflict* (Jossey-Bass 1988)

Van Evera S, *Guide to Methods for Students of Political Science* (Cornell University Press 1997)

Van Manen M, 'Phenomenological Pedagogy and the Question of Meaning' in Vandenberg D (ed), *Phenomenology and Education Discourse* (Heinemann 1997)

Vogel FE, *Islamic Law and Legal System: Studies of Saudi Arabia* (Brill 2000)

Wade W and Forsyth C, *Administrative Law* (9th edn, Oxford University Press 2004)

Weatherill S, *EU Consumer Law and Policy* (2nd edn, Edward Elgar 2013)

Wetherell M and Porter J, 'Discourse Analysis and the Identification of Interpretive Repertoires' in Antaki C (ed), *Analysing Everyday Explanation: A Casebook of Methods* (Sage 1988)

Welman JC and Kruger SJ, *Research Methodology for the Business and Administrative Sciences* (International Thompson 1999)

Wilson R, *Economic Development in Saudi Arabia* (Routledge 2004)

Williston S, *A Treatise on the Law of Contracts* (WHE Jaeger edn, 3rd edn, Baker, Voorhis and Co 1959)

Winters RC, Globokar JL and Robertson C, *An Introduction to Crime and Crime Causation* (CRC Press 2014)

Withana R, *Power, Politics, Law: International Law and State Behaviour During International Crises* (Martinus Nijhoff 2008)

Wraith RE and Hutchesson PG, *Administrative Tribunals* (George Allen and Unwin 1973)

Yassine-Hamdan N and Pearson FS, *Arab Approaches to Conflict Resolution: Mediation, Negotiation and Settlement of Political Disputes* (Routledge 2014)

Yin RR, *Case Study Research: Design and Methods* (5th edn, Sage 2014)

Zarqa M, *The General Fiqhi Entrance* (Dar Alqalam 1998)

Peer-Reviewed Journal Articles

Aba-Namay R, 'The Recent Constitutional Reforms in Saudi Arabia' (1993) 42 *International Law and Comparative Law Quarterly* 295

Abdou H, Ali K and Lister R, 'A Comparative Study of Takaful and Conventional Insurance: Empirical Evidence from the Malaysian Market' (2014) 4(1) *Insurance Markets and Companies: Analyses and Actuarial Computations* 22

Abraham KS, 'Four Conceptions of Insurance' (2013) 161(3) *University of Pennsylvania Law Review* 653

- Abraham KS, 'A Theory of Insurance Policy Interpretation' (1996) 95 *Michigan Law Review* 531
- Abu-Nimber M, 'Conflict Resolution Approaches: Western and Middle Eastern Lessons and Possibilities' (1996) 55 *American Journal of Economics and Sociology* 35
- Agha O, 'Tabarru in Takaful: Helpful Innovation or Unnecessary Complication' (2009-2010) 9(1) *UCLA Journal of Islamic and Near Eastern Law* 102
- Al-Ammari S and Martin AT, 'Arbitration in the Kingdom of Saudi Arabia' (2014) 30(2) *Arbitration International* 387
- Al-Ghadyan AA, 'The Changing Phases of Arbitration in Saudi Arabia' (1997) 63 *Arbitration-London* 132
- Al-Ghadyan AA, 'The Judiciary in Saudi Arabia' (1998) 13(3) *Arab Law Quarterly* 235
- Al-Jarbou AM, 'Judicial Independence: Case Study of Saudi Arabia' (2004) 19(1/4) *Arab Law Quarterly* 5
- Al-Jarbou AM, 'The Saudi Board of Grievances: Development and New Reform' (2011) 25(2) *Arab Law Quarterly* 177
- Al-Mehaimeed AM, 'The Constitutional System of Saudi Arabia: A Conspectus' (1993) 8(1) *Arab Law Quarterly* 30
- Al-Samaan Y, 'The Settlement of Foreign Investment Disputes by Means of Domestic Arbitration in Saudi Arabia' (1994) 9(3) *Arab Law Quarterly* 217
- Alboaoth K and Mahoney J, 'Religious and Political Authority in the Kingdom of Saudi Arabia: Challenges and Prospects' (2017) 6(2) *MANAS Journal of Social Studies* 241
- Alkenizan AH and Shafiq M, 'The Process of Litigation for Medical Errors in Saudi Arabia and the United Kingdom' (2018) 39(11) *Saudi Medical Journal* 1075
- Alkindy SA, 'Expatriate Doctors, Medical Litigations and Overall Patient Care: Taif Study' (2016) 4 *Saudi Surgery Journal* 104
- Almushaigeh M, 'The Legitimacy of Arbitration in Islamic Law 'Shari'a' (2016) 2 *Islamic Law Magazine at Indiana University* 9
- Alnowaiser K, 'The New Arbitration Law and Its Impact on Investment in Saudi Arabia' (2012) 29 *Journal of International Arbitration* 723
- Ansary ZA, 'An Empirical Analysis of Risk Perception, Remedial Measures and Behaviour of People in Saudi Arabia Towards Insurance' (2000) 6(10) *African Journal of Business Management* 3733
- Archibald MM, 'Investigator Triangulation: A Collaborative Strategy with Potential for Mixed Methods Research' (2016) 10(3) *Journal of Mixed Methods Research* 228
- Aspers P and Corte U, 'What is Qualitative in Qualitative Research' (2019) 42(2) *Qualitative Sociology* 139
- Astalin PK, 'Qualitative Research Designs: A Conceptual Framework' (2013) 2(1) *International Journal of Social Sciences and Interdisciplinary Research* 118
- Atiyah PS, 'The Principles of Social Order: Selected Essays of Lon Fuller, edited with an introduction by Kenneth I. Winston, 1983 *Duke Law Journal* 669
- Awwad R, Barakat B and Menassa C, 'Understanding Dispute Resolution in the Middle East Region from Perspectives of Different Stakeholders' (2016) 32(6) *Journal of Management in Engineering* 1

- Baamir A and Bantekas I, 'Saudi Law as Lex Arbitri: Evaluation of Saudi Arbitration Law and Judicial Practice' (2009) 25(2) *Arbitration International* 239
- Baker T, 'Constructing the Insurance Relationship: Sales Stories, Claims Stories, and Insurance Contract Damages' (1994) 72 *Texas Law Review* 1395
- Baker T, 'Liability Insurance as Tort Regulation: Six Ways that Liability Insurance Shapes Tort Law in Action' (2005) 12 *Connecticut Insurance Law Journal* 1
- Barakah DM and Alsalha SA, 'The Cooperative Insurance in Saudi Arabia: A Nucleus to Health Reform Policy' (2011) 21 *IPEDR* 6
- Barendt E, 'Separation of Powers and Constitutional Government' (1995) *Public Law* 559
- Beatty OT, 'Workers' Compensation and Hoffman Plastic: Pandora's Undocumented Box' (2011) 55 *St Louis University Law Journal* 1211
- Bengtsson M, 'How to Plan and Perform a Qualitative Study Using Content Analysis' (2016) 2 *Nursing Plus Open* 8
- Berger M, 'Public Policy and Islamic Law: The Modern Dhimmi in Contemporary Egyptian Family Law' (2001) 8(1) *Islamic Law and Society* 88
- Bertino S, 'A Measure of Representativeness of a Sample for Inferential Purposes' (2006) 74(2) *International Statistical Review* 149
- Bingham L, 'Employment Arbitration: The Repeat Player Effect' (1997) 1 *Employee Rights and Employment Policy Journal* 189
- Bingham JW, 'What is the Law?' (1912) 11 *Michigan Law Review* 1
- Blankey KM, 'Keeping a Secret from Yourself? Confidentiality When Same Neutral Serves Both as Mediator and as Arbitrator in the Same Case' (2011) 63 *Baylor Law Review* 317
- Bowman HM, 'American Administrative Tribunals' (1906) 21(4) *Political Science Quarterly* 609
- Brand JL, 'Aspects of Saudi Arabian Law and Practice' (1986) 9(1) *Boston College International and Comparative Law Review* 1
- Brewer JT and Mills LR, 'Med-Arb: Combining Mediation and Arbitration' (1999) 54 *Dispute Resolution Journal* 32
- Bruff HH, 'Specialized Courts in Administrative Law' (1991) 43 *Administrative Law Review* 329
- Carbonneau TE, 'The Revolution in Law through Arbitration' (2008) 56 *Cleveland State Law Review* 233
- Carnwath R, 'Tribunal Justice: A New Start' (2009) *Public Law* 48
- Cheung SO and Yeung YW, 'The Effectiveness of the Dispute Resolution Advisor System: A Critical Appraisal' (1998) 16(6) *International Journal of Project Management* 367
- Cheung SO, Suen HCH and Lam TI, 'Fundamentals of Alternative Dispute Resolution Processes in Construction' (2002) 128(5) *Journal of Construction Engineering and Management* 409
- Choi SB et al, 'Towards A Better Understanding of Good Faith Concept in Islamic Contract Law' (2018) 7(4) *International Journal of Engineering and Technology* 247
- Ciraco D, 'Forget the Mechanics and Bring in the Gardeners' (2000) 9 *University of Baltimore Intellectual Property Law Journal* 47
- Clark CE, 'Making Courts Efficient' (1961) 8 *UCLA Law Review* 489

- Cobb S and Rifkin J, 'Practice and Paradox: Deconstructing Neutrality in Mediation' (1991) 16 *Law and Society Inquiry* 35
- Cohen JN, 'Sound the Alarm: Limitations of Liability in Alarm Service Contracts' (2016) 85(2) *Fordham Law Review* 813
- Cohen SH and Quaintance KL, 'Role of Contra Proferentem in interpretation of Insurance Contracts' (1989) 2(1) *Environmental Claims Journal* 13
- Colvin AJS, 'An Empirical Study of Employment Arbitration: Case Outcomes and Processes' (2011) 8(1) *Journal of Empirical Legal Studies* 1
- Comer MJ, *Investigating Corporate Fraud* (Gower 2003) 185. See also, Klein B and Leffier KB, 'The Role of Market Forces in Assuring Contractual Performance' (1981) 89 *Journal of Political Economics* 615
- Corlette S et al, 'Before and After the Affordable Care Act: Consumers' Coverage Experience through the Eyes of State Consumer Assistance Programs' (2015) *The Center on Health Insurance Reform Letter* 1
- Creyke R, 'Administrative Justice: Towards Integrity in Government' (2007) 31 *Melbourne University Law Review* 705
- Chong H and Zin RM, 'Selection of Dispute Resolution Methods: Factor Analysis Approach' (2012) 19(4) *Engineering, Construction and Architectural Management* 428
- Cook T, 'Law, Arbitrariness and Ethics' (1942) 30(2) *California Law Review* 151
- Cronin JJ and Taylor SA, 'Measuring Service Quality: A Re-examination and Extension' (1992) 56(7) *Journal of Marketing* 55
- Cummings SL, 'The Future of Public Interest Law' (2011) 33 *University of Arkansas Little Rock Law Review* 355
- D'Amato A, 'Legal Uncertainty' (1983) 71 *California Law Review* 1
- D'Amato A, 'The Limits of Legal Realism' (1978) 87 *Yale Law Journal* 468
- Denenberg HS, 'The Legal Definition of Insurance: Insurance Principles in Practice' (1963) 30(3) *The Journal of Insurance* 319
- Dobbins JC, 'New Evidence on Appeal' (2012) 96 *Minnesota Law Review* 2016
- Dobias P, 'Rights and Duties of Parties in Insurance Arbitration' (2015) 15 *Czech (& Central European) Yearbook of Arbitration* 43
- Drewry G, 'The Judicialisation of 'Administrative' Tribunals in the UK: From Hewart to Leggatt' (2009) 28 *Transylvanian Review of Administrative Science* 45
- Duncan EE, 'The Demise of "Contra Proferentem" as the Primary Rule of Insurance Contract Interpretation in Ohio and Elsewhere' (2006) 41(4) *Tort Trial and Insurance Practice Law Journal* 1121
- Duve C, 'Arbitration and Alternative Dispute Resolution in Insurance Law – A Practitioner's Approach' (2009) 10(2) *ERA Forum* 177
- Easton J, 'Where to Draw the Line? Is Efficiency Encroaching on a Fair Justice System?' (2018) 29(2) *The Political Quarterly* 246
- Edwards A, 'The Relationship between the Judged Desirability of a Trait and the Probability that the Trait will be Endorsed' (1953) 37(2) *Journal of Applied Psychology* 90

- Eisenberg T, 'Appeal Rates and Outcomes in Tried and Non-tried Cases: Further Exploration of Anti-Plaintiff Appellate Outcomes' (2004) 1(3) *Journal of Empirical Legal Studies* 659
- El-Haklim J, 'Enforcement of Foreign Judgments and Arbitral Awards in Syria' (1990) 5 *Arab Law Quarterly* 137
- Elo S et al, 'Qualitative Content Analysis: A Focus on Trustworthiness' (2014) 4(1) *Sage Open* 1
- Emon AM, 'Natural Law and Natural Rights in Islamic Law' (2005) 20(2) *Journal of Law and Religion* 351
- Engel DM, 'Legal Pluralism in an American Community: Perspectives on a Civil Trial Court' (1980) 1980 *American Bar Foundation Research Journal* 425
- Fadel M, 'Islamic Law and American Law: Between Concordance and Dissonance' (2012-2013) 57 *New York Law School Law Review* 231
- Fansworth W, Guizor DF and Malani A, 'Ambiguity about Ambiguity: An Empirical Inquiry into Legal Interpretation' (2010) 2(1) *Journal of Legal Analysis* 257
- Farber DA and Frickey PP, 'Practical Reason and the First Amendment' (1987) 34 *UCLA Law Review* 1615
- Fayad M, 'A Glance at Unfair Terms in Consumer Transactions in Arab Legal Systems and Islamic Law: What Arab Lawyers Can Learn from the European Experience' (2012) 5(2) *International Journal of Private Law* 200
- Fedynskyj J (Dainow J, ed) 'The Role of Judicial Decisions and Doctrine in Civil Law and Mixed Jurisdictions' (1975) 50(3) *Indiana Law Journal* 638
- Feinman M, 'Practical Legal Studies and Critical Legal Studies' (1988) 87 *Michigan Law Review* 724
- Fiss O, 'Against Settlement' (1984) 93 *Yale Law Journal* 1073
- French RS, 'Judicial Review Rights' (2001) 28 *Australian Institute of Administrative Law Forum* 30
- Friedman LM and Ladinsky J, 'Social Change and the Law of Industrial Accidents' (1967) *Columbia Law Review* 50
- Frohmann B, 'Discourse Analysis as a Research Method in Library and Information Science' (1994) 16 *Library and Information Science Research* 119
- Gabel JTA, 'Escalating Inefficiency in Workers' Compensation Systems: Is Federal Reform the Answer?' (1999) 34 *Wake Forest Law Review* 1083
- Gardenier JS and Resnik DB, 'The Misuse of Statistics: Concepts, Tools, and a Research Agenda' (2002) 9(2) *Accounting Research* 65
- Gatian AW, 'Is User Satisfaction a Valid Measure of System Effectiveness?' (1994) 26(3) *Information & Management* 119
- Gemmell AJ, 'Commercial Arbitration in the Islamic Middle East' (2006) 5(1) *Santa Clara Journal of International Law* 169
- Geotz CJ and Scott RE, 'Liquidated Damages, Penalties and the Just Compensation Principle: Some Notes on an Enforcement Model and a Theory of Efficient Breach' (1977) 77 *Columbia Law Review* 554
- Ghazi MA, 'Constitutional Human Rights: Saudi Perspective' (2010) 4(3) *Journal of Middle Eastern and Islamic Studies* 28
- Gilles SG, 'The Judgment-Proof Society' (2006) 63 *William & Mary Law Review* 603

- Gilson RJ, Sabel CF and Scott RE, 'Text and Context: Contract Interpretation as Contract Design' (2014) 100(1) *Cornell Law Review* 23
- Golafshani N, 'Understanding Reliability and Validity in Qualitative Research' (2003) 8(4) *The Qualitative Report* 597
- Gorod BJ, 'The Adversarial Myth: Appellate Court Extra-Record Factfinding' (2011) 61 *Duke Law Journal* 1
- Gotlieb JB, Grewal D and Brown SW, 'Customer Satisfaction and Perceived Quality: Complementary or Divergent Constructs?' (1994) 76(6) *Journal of Applied Psychology* 875
- Habib E, 'Obstetricians' Perception of Medico-Legal Problems in Al Madinah Al Munawarah Kingdom of Saudi Arabia' (2010) 5 *Journal of Taibah University Medical Sciences* 66
- Haberbeck A, 'Risk Sharing in an Islamic Society' (1987) 2 *Arab Law Quarterly* 138
- Hammersly M, 'Ethnography: Problems and Prospects' (2006) 1(1) *Ethnography and Education* 3
- Hanson M, 'The Influence of French Law on the Legal Development of Saudi Arabia' (1987) *Arab Law Quarterly* 272
- Hardy C, Harley B and Phillips N, 'Discourse Analysis and Content Analysis: Two Solitudes?' (2004) *Qualitative Methods* 19
- Harley H, 'An Efficient County Court System' (1917) 73 *Justice Through Simplified Legal Procedure* 189
- Hart HLA, 'Foreword: The Time Chart of the Justices' (1959) 73 *Harvard Law Review* 84
- Herrera YM and Braumoeller BF, 'Symposium: Discourse and Content Analysis' (2004) *Qualitative Methods* 15
- Hess GF, 'Qualitative Research on Legal Education: Studying Outstanding Law Teachers' (2014) 51(4) *Alberta Law Review* 925
- Hirons E, Simon A and Simon C, 'External Customer Satisfaction as a Performance Measure of the Management of a Research and Development Department' (1998) 15(8/9) *Journal of Marketing* 21
- Hodges BD, Kuper A and Reeves S, 'Qualitative Research: Discourse Analysis' (2008) 337(7669) *British Medical Journal* 570
- Husein A and Burns J, 'Choice of Forum in Contracts with Saudi Arabian Counterparties: An Analysis of the DIFC Common Law Courts from a Saudi Arabian Perspective' (2015) 48(3) *International Lawyer* 179
- Hutchinson T, 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law' (2015) 3 *Erasmus Law Review* 130
- Hutchinson T, 'Vale Bunny Watson? Law Librarian, Law Libraries and Legal Research in the Post-Internet Era' (2014) 106(4) *Law Library Journal* 579
- Iqbal W, 'Courts, Lawyering, and ADR: Glimpses into the Islamic Tradition' (2008) 28 *Fordham Urban Law Journal* 1035
- Ismail F, 'Insurance and *Shariah* Takaful: A Practical Alternative' (1998) 2(2) *Nida'ul Islam* 1
- Jerry II RH, 'Dispute Resolution, Insurance, and Points of Convergence' (2015) 2(3) *Journal of Dispute Resolution* 255
- Joo S, 'How are Usability Elements – Efficiency, Effectiveness, and Satisfaction – Correlated with Each Other in the Context of Digital Libraries?' (2010) *ASIST* 1

- Joshi KC, 'Service Tribunals under Administrative Tribunals Act' (1986) 28(2) *Journal of the Indian Law Institute* 207
- Karpen SC, 'The Social Psychology of Biased Self-Assessment' (2018) 82(5) *American Journal of Pharmaceutical Education* 6299
- Kawharu A, 'Arbitral Jurisdiction' (2008) 23 *New Zealand Universities Law Review* 238
- Keeton RE, 'Insurance Law Rights at Variance with Policy Provisions (Parts I and H)' (1970) 83 *Harvard Law Review* 961
- Keeton RE, 'Reasonable Expectations in the Second Decade' (1976) 12 *FORUM* 275
- Kensit DA, 'Rogerian Theory: A Critique of the Effectiveness of Pure Client-Centred Therapy' (2000) 13(4) *Counselling Psychology Quarterly* 245
- Kevelson R, 'Pierce's Dialogism and Continuous Predicate' (1982) 18 *Transactions of the Charles S. Pierce Society* 110
- Kevelson R, 'Semiotics and Methods of Legal Inquiry: Interpretation and Discovery in Law from the Perspective of Pierce's Speculative Rhetoric' (1986) 61(3) *Indiana Law Journal* 355
- Khan K and Aftab S, 'Consumer Protection in Islam: The Case of Pakistan' (2000) 39(4) *Australian Economic Papers* 483
- Khan MA, 'Consumer Protection in Islamic Law (Shariah): An Overview' (2011) 45(31) *AL-ADWA* 77
- Khan SN, 'Qualitative Research – Phenomenology' (2014) 10(21) *Asian Social Science* 298
- Langbein JH, 'Trust Law as Regulatory Law: The Unum/Provident Scandal and Judicial Review of Benefit Denials Under ERISA' (2007) 101 *Northwest University Law Review* 1315
- Latta KK, 'The Role of Non-Lawyers on Administrative Tribunals: What Lay Members Think about Law, Lawyers, and Their Own Participation in Alaska's Mixed Administrative Tribunals' (2014) 31(1) *Alaska Law Review* 37
- Leelakrishnan P, 'Reviewing Decisions of Administrative Tribunal: Paternalistic Approach of the Indian Supreme Court and Need for Institutional Reforms' (2012) 54(1) *Journal of the Indian Law Institute* 1
- Liao K, 'The Causal Effects of Service Quality, Brand Image, Customer Satisfaction on Customer Loyalty in the Leisure Resort Enterprise' (2012) 11(5) *China-USA Business Review* 631
- Llewellyn K, 'On What Makes Legal Research Worth While' (1956) 8 *Journal of Legal Education* 399
- Long DE, 'The Board of Grievances in Saudi Arabia' (1973) 27(1) *Middle East Journal* 71
- Lowenfeld AF, 'Conflict, Balancing of Interests, and the Exercise of Jurisdiction to Prescribe: Reflections on the Insurance Antitrust Case' (1995) 89(1) *American Journal of International Law* 42
- MacEoin D, 'Tactical Hudna and Islamist Intolerance' (2008) *Middle East Quarterly* 39
- Makdisi G, 'The Significance of the Sunni Schools of Law in Islamic Religious History' (1979) 10(1) *International Journal of Middle East Studies* 1
- Marar AD, 'Saudi Arabia: The Duality of the Legal System and the Challenge of Adapting Law to Market Economies' (2004) 19(1/4) *Arab Law Quarterly* 91
- Marshall MN, 'Sampling for Qualitative Research' (1996) 13(6) *Family Practice – An International Journal* 522

- Martin LT and Luoto JE, 'From Coverage to Care: Strengthening and Facilitating Consumer Connections to the Health System' (2015) 5(2) *Rand Health Quarterly* 1
- Massadeh AE, 'An Analysis of the Civil Service Disciplinary System of Saudi Arabia and Kuwait: An Islamic Perspective and A Comparative Overview' (1992) 10(3) *Dickinson Journal of International Law* 461
- Mason M, 'Sample Size and Saturation in PhD Studies Using Qualitative Interviews' (2010) 11(3) *Forum: Qualitative Social Research* 1,
- Matsawali MS et al, 'A Study of Takaful and Conventional Insurance Preferences: The Case of Brunei' (2012) 3(22) *International Journal of Business and Social Science* 163
- Megginson W and Netter J, 'From State to Market: A Survey of Empirical Studies on Privatization' (2001) 39(2) *Journal of Economic Literature* 321
- Menkel-Meadow C, 'Peace and Justice: Notes on the Evolution and Purposes of Legal Processes' (2006) 94 *Georgetown Law Journal* 553
- Menkel-Meadow C, 'Process Pluralism in Transitional/Restorative Justice – Lessons from Dispute Resolution for Cultural Variations in Goals beyond Rule of Law and Democracy Development' (2015) 3(1) *International Journal of Conflict Engagement and Resolution* 3
- Menkel-Meadow C, 'Whose Dispute Is It Anyway? A Philosophical and Democratic Defense of Settlement (in Some Cases)' (1995) 83 *Georgetown Law Journal* 2663
- Mikail SA and Arifin M, 'Application of Judicial Precedent in *Shariah* Courts' (2013) 2 *Malaysian Court of Practice Bulletin* 1
- Mirah D and Ra' ed Masa' deh, 'An Analysis of the Insurance Industry Regulator in Saudi Arabia and Jordan through the Comparison with Insurance Industry Regulator in the UK' (2014) 10(3) *Asian Social Science* 211
- Morse JM et al, 'Verification Strategies for Establishing Reliability and Validity in Qualitative Research' (2002) 1 *International Journal of Qualitative Methods* 13
- Mulligan D, 'Know Your Customer Regulations and the International Banking System: Towards a General Self-Regulatory Regime' (1998) 22(5) *Fordham International Law Journal* 2324
- Munir M, 'Precedent in Islamic Law with Special Reference to the Federal *Shariah* Court and the Legal System in Pakistan' (2008) 47(4) *Islamic Studies* 445
- Munro G, 'Exposing "Illusory" Underinsured Motorist Coverage' (2003) *Trial Trends* 28
- Musselwhite K et al, 'The Telephone Interview is an Effective Method of Data Collection in Clinical Nursing Research: A Discussion Paper' (2007) 44 *International Journal of Nursing Studies* 1064
- Nana A, 'A Proposed Marriage between Endowments, Mutual Insurance and the Institution of Agency in Islamic Law: Introduction to the Waq-f Wakala Model of the Takaful' in Ali SN and Nisar S (eds), *Takaful and Islamic Cooperative Finance: Challenges and Opportunities* (Edward Elgar 2016)
- Neels JN, 'The Positive Role of Public Policy in Private International Law and the Recognition of Foreign Muslim Marriages' (2012) 28(2) *South African Journal on Human Rights* 219
- Nikulin AA et al, 'Judicial System of Saudi Arabia and Analysis of Jurisdiction Courts of First Instance' (2017) 13(2) *Revista Publicando* 834
- Nilson P, 'Making Sense of Implementation Theories, Models and Frameworks' (2015) 10 *Implementation Science* 53
- Nimmer R, 'A Slightly Moveable Object: A Case Study in Judicial Reform in the Criminal Justice Process: The Omnibus Hearing' (1976) 48 *Denver Law Journal* 206

- Nor MZM, 'Settling Islamic Finance Disputes: The Case of Malaysia and Saudi Arabia' in Koppel A, Matter M and Palmer V (eds), *Mixed Legal Systems, East and West* (Ashgate 2015) 267
- Omair A, 'Sample Size Estimation and Sampling Techniques for Selecting a Representative Sample' (2014) 2(4) *Journal of Health Specialities* 142
- Overby AB, 'An Institutional Analysis of Consumer Law' (2001) 34 *Vanderbilt Journal of Transnational Law* 1219
- Padilla-Diaz M, 'Phenomenology in Educational Qualitative Research: Philosophy as Science or Philosophical Science?' (2015) 1(2) *International Journal of Education Excellence* 101
- Petkute-Guriene J, 'The Competence-Competence Principle in Commercial Arbitration: A Comparative Analysis' (2017) 5 *Social Transformations in Contemporary Society* 88
- Phillips GF, 'Same-Neutral Med-Arb: What Does the Future Hold?' (2005) 60 *Dispute Resolution Journal* 24
- Pickerill CN, 'Specialized Adjudication in an Administrative Forum: Bridging the Gap Between Public and Private Law' (2007) 82(4) *Notre Dame Law Review* 1605
- Pollak LH, 'Racial Discrimination and Judicial Integrity: A Reply to Professor Wechsler' (1959) 108 *University of Pennsylvania Law Review* 1
- Ponto J, 'Understanding and Evaluating Survey Research' (2015) 6(2) *Journal of the Advanced Practitioner in Oncology* 168
- Posner RA, 'The Law and Economics of Contract Interpretation' (2005) 83 *Texas Law Review* 1581
- Priest GL, 'The Current Insurance Crisis and Modern Tort Law' (1987) 96 *Yale Law Journal* 1521
- Pretorius P, 'ADR: A Challenge to the Bar for the 1990s' (1990) 1 *Consultus* 38
- Rabin RL, 'Abandoning Our Illusions: An Evaluation of Alternative Approaches to Law Reform' (1974) 27 *Stanford Law Review* 191
- Rahim A, Wahab A, Lewis MK and Hassan MK, 'Islamic *Takaful*: Business Models, *Shariah* Concerns and Proposed Solutions' (2007) 49(3) *Thunderbird International Business Review* 371
- Rahdert MC, 'Reasonable Expectations Reconsidered' (1998-1999) 5 *Connecticut Insurance Law Journal* 107
- Ramsey CA and Hewitt AD, 'A Methodology for Assessing Sample Representativeness' (2005) 6 *Environmental Forensics* 71
- Reuben RC, 'Confidentiality in Arbitration: Beyond the Myth' (2006) 54 *University of Kansas Law Review* 1255
- Rhee RJA, 'A Price Theory of Legal Bargaining: An Inquiry into the Selection of Settlement and Litigation under Uncertainty' (2006) 56 *Emory Law Journal* 619
- Rifkind SH, 'Are We Asking Too Much of Our Courts?' (1976) 70 *Federal Rules Decisions* 96
- Robinson NHG, 'Natural Law, Morality and the Divine Will' (1950) 3(10) *The Philosophical Quarterly* 23
- Robinson P, Perlstein A and Mayer B, 'DyADS: Encouraging Dynamic Adaptive Dispute Systems' (2005) 10 *Harvard Negotiation Law Review* 339
- Rowe MP, 'People Who Feel Harassed Need a Complaint System with Both Formal and Informal Options' (1990) 6 *Negotiation Journal* 161

- Rowe MP, 'The Ombudsman's Role in a Dispute Resolution System' (1991) 7(4) *Negotiation Journal* 353
- Roy KT, 'The New York Convention and Saudi Arabia: Can a Country Use the Public Policy Defense to Refuse Enforcement of Non-Domestic Arbitral Awards?' (1994) 18(3) *Fordham International Law Journal* 920
- Ruiz JR, 'Sociological Discourse Analysis: Methods and Logic' (2009) 10(2) *Forum: Qualitative Social Research* 1
- Sadala MLA and de Adorno RCF, 'Phenomenology as a Method to Investigate the Experiences Lived: A Perspective from Husserl and Merleau-Ponty's Thought' (2001) 37(3) *Journal of Advanced Nursing* 282
- Saleh SA, 'The Settlement of Disputes in the Arab World: Arbitration and Other Methods' (1986) 4 *International Tax and Business Lawyer* 280
- 'Saudi Arabia: The New Constitution: The Kingdom of Saudi Arabia' (1993) 8(3) *Arab Law Quarterly* 258
- Sales NA and Adler JH, 'The Rest is Silence: Chevron Jurisdiction, Agency Deference, and Statutory Silences' (2009) *University of Illinois Law Review* 1497
- Saunders B et al, 'Saturation in Qualitative Research: Exploring Its Conceptualization and Operationalization' (2018) 52(4) *Quality and Quantity* 1893
- Sayen G, 'Arbitration, Conciliation and the Islamic Legal Tradition in Saudi Arabia' (2003) 24(4) *University of Pennsylvania Journal of International Economic Law* 905
- Schmitz AJ, 'Untangling the Privacy Paradox in Arbitration' (2006) 54 *University of Kansas Law Review* 1211
- Schwarcz D, 'Redesigning Consumer Dispute Resolution: A Case Study of the British and American Approaches to Insurance Claims Conflict' (2009) 83 *Tulane Law Review* 735
- Schwebel SM, 'The Kingdom of Saudi Arabia and Aramco Arbitrate the Onassis Agreement' (2010) 3(3) *The Journal of World Energy Law and Business* 245
- Sedikides C, Horton RS and Gregg AP, 'The Why's the Limit: Curtailing Self-Enhancement with Explanatory Introspection' (2007) 75(4) *Journal of Personality* 783
- Sfeir GN, 'The Saudi Approach to Law Reform' (1988) 36(4) *The American Journal of Comparative Law* 729
- Siddiqui MH and Sharma TH, 'Analyzing Customer Satisfaction with Service Quality in Life Insurance Services' (2010) 18(3-4) *Journal of Targeting, Measurement and Analysis for Marketing* 221
- Simmons JB, 'Valuation in Investor-State Arbitration: Toward a More Exact Science' (2012) 30 *Berkeley Journal of International Law* 196
- Skipper HD and Klein RW, 'Insurance Regulation in the Public Interest: The Path Towards Solvent, Competitive Markets' (2000) 25(4) *The Geneva Papers on Risk and Insurance – Issues and Practice* 482
- Slattery EH, 'Who Will Regulate the Regulators? Administrative Agencies, the Separation of Powers, and Chevron Deference' (2015) 153 *Legal Memorandum* 1
- Smith S and Martine J, 'An Analytic Framework for Dispute System Design' (2009) 14(1) *Harvard Negotiation Law Review* 123
- Solaim SS, 'Saudi Arabia's Judicial System' (1971) 25(3) *Middle East Journal* 403

- Sossin L, 'Ontario's Administrative Tribunal Clusters: A Glass Half-Full or Half-Empty for Administrative Justice?' (2012) 12(1) *Oxford University Commonwealth Law Journal* 157
- Sossin L, 'Designing Administrative Justice' (2017) 34(1) *Windsor Yearbook of Access to Justice* 87
- Spreng RA and Mackoy RD, 'An Empirical Examination of a Model of Perceived Service Quality and Satisfaction' (1996) 72(2) *Journal of Retailing* 201
- Stake RE, 'The Case Study Method in Social Inquiry' (1978) 7(2) *Educational Researcher* 5
- Stempel J, 'Reassessing the Sophisticated Policyholder Defense in Insurance Coverage Litigation' (1993) 42 *Drake Law Review* 807
- Stephan A, Linz J and Minoves J, 'Democratic Parliamentary Monarchies' (2014) 25(2) *Journal of Democracy* 35
- Strong SI, 'The Special Nature of International Insurance and Reinsurance Arbitration: A Response to Professor Jerry' (2015) 15(2) *Journal of Dispute Resolution* 283
- Strub MH, 'Note: Resisting Enforcement of Foreign Arbitral Awards under Article V(1)(E) and Article 1(W) of the New York Convention: A Proposal for Effective Guidelines' (1990) 68 *Texas Law Review* 1031
- Sturges JE and Harahan KJ, 'Comparing Telephone and Face-to-Face Qualitative Interviewing: A Research Note' (2004) 4 *Qualitative Research* 107
- Subrin SN, 'Litigation and Democracy: Restoring a Reasonable Prospect of Trial' (2011) 46 *Harvard Civil Rights-Civil Liberties Law Review* 39
- Sutton J and Austin Z, 'Qualitative Research: Data Collection, Analysis and Management' (2015) 68(3) *The Canadian Journal of Hospital Pharmacy* 226
- Swisher PN, 'Judicial Rationales in Insurance Law: Dusting Off the Formal of the Function' (1991) 52(4) *Ohio State Law Journal* 1037
- Sykes AO, 'Bad Faith' Breach of Contract by First-Party Insurers' (1996) 25(2) *Legal Studies* 405
- Talesh S, 'Insurance Law as Public Interest Law' (2012) 2 *UC Irvine Law Review* 985
- Tennille BF, Applebaum L and Nees AT, 'Getting to Yes in Specialised Courts: The Unique Role of ADR in Business Court Cases' (2010) 11 *Pepperdine Dispute Resolution Law Journal*, 35
- Tinsey CH et al, 'The Interplay between Culturally-and Structurally-based Mental Methods of Intercultural Dispute Resolution: West Meets Middle East' (2011) 16(3) *International Negotiation* 481
- Tirados RMG, 'Negotiation' (2010) 48 *Management* 849
- Trumbull CP, 'Islamic Arbitration: A New Path for Interpreting Islamic Legal Contracts' (2006) 59 *Vanderbilt Law Review* 609
- Tufford L and Newman P, 'Bracketing in Qualitative Research' (2010) 11(1) *Qualitative Social Work* 80
- Turck NB, 'Dispute Resolution in Saudi Arabia' (1988) 22(2) *The International Lawyer* 415
- Ustaoglu M, 'Public Awareness, Understanding and Attitudes Towards Interest-Free Insurance (Takaful) Services Evaluation by Education Level: Survey Based on Empirical Analysis for Turkey' (2015) 50(4) *Journal of Asian and African Studies* 445
- Vibhute KI, 'Administrative Tribunals and the High Courts: A Plea for Judicial Review' (1987) 29(4) *Journal of the Indian Law Institute* 524
- Wallace JD, 'Practical Inquiry' (1969) 78(4) *The Philosophical Review* 435

- Wechsler H, 'Toward Neutral Principles of Constitutional Law' (1959) 73 *Harvard Law Review* 1
- Weinstein JB, 'Some Benefits and Risks of Privatization of Justice through ADR' (1996) 11 *Ohio State Journal on Dispute Resolution* 241
- Weiss I, 'The Illusory Coverage Doctrine: A Critical Review' (2018) 166 *University of California Law Review* 1545
- Wellman VA, 'Practical Reasoning and Judicial Justification: Toward an Adequate Theory' (1985) 57 *Colorado Law Review* 45
- Westbrook RA and Oliver RL, 'The Dimensionality of Consumption Emotion Patterns and Consumer Satisfaction' (1991) *Journal of Consumer Research* 84
- Williston S and Lord RA, *A Treatise on the Law of Contracts* (4th edn, West Group 1993)
- Wilson K, Roe B and Wright L, 'Telephone or Face-to-Face Interviews? A Decision Made on the Basis of a Pilot Study' (1998) 35 *International Journal of Nursing Studies* 314
- Woloniecki J, 'The Duty of Utmost Good Faith in Insurance Law: Where Is It in the 21st Century' (2002) 9 *Defence Counsel Journal* 63
- Woodhouse BB, 'Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life' (1993) 91 *Michigan Law Review* 1977
- Works R, 'Excusing Non-occurrence of Insurance Policy Conditions in Order to Avoid Disproportionate Forfeiture: Claims-made Formats as a Test Case' (1998) 5(2) *Connecticut Insurance Law Journal* 506
- Zacharias D, 'Fundamentals of the Sunni Schools of Law' (2006) 66 *Heidelberg Journal of International Law* (ZaoRV) 491

Unpublished Dissertations

- Abbadi SMB, *Arbitration in Saudi Arabia: The Reform of Law and Practice* (Unpublished SJD Dissertation, Pennsylvania State University 2018)
- Al-Hamoudi AK, *Criminal Defense in Saudi Arabia: An Empirical Study of the Practice of Criminal Defense in Saudi Arabia* (Unpublished PhD Dissertation, University of Washington 2014)
- Al-Kahtani F, *Current Practices of Saudi Corporate Governance: A Case for Reform* (Unpublished PhD Thesis, Brunel University, 2013)
- Al-Shehry A, *The Reasonable Expectation Doctrine Knocks on the Saudi Legislative Council Door* (Unpublished SJD Dissertation, Wake Forest University 2014)
- Aleisa MI, *A Critical Analysis of the Legal Problems Associated with the Recognition and Enforcement of Arbitral Awards in Saudi Arabia: Will the New Saudi Arbitration Law 2012 Resolve the Main Legal Problems?* (Unpublished PhD Dissertation, University of Essex 2016)
- Aljallal AA, *The Duty of Good Faith in Insurance Law: A Study of Saudi Law Compared to English Law* (Unpublished PhD Dissertation, University of Southampton 2014)
- Aljaser A, *Is Islamic Insurance Ready to Take the Lead? - A Case Study of the Saudi Arabian Insurance Law* (Unpublished SJD Dissertation, Georgetown University 2014)
- Baamir AY, *Saudi Law and Judicial Practice in Commercial and Banking Arbitration* (Unpublished PhD Dissertation, Brunel University 2008)

Binaseed F, *Factors Affecting Foreign Direct Investment Location in the Petrochemicals Industry* (Unpublished PhD Dissertation, Brunel University 2009)

Farhan FA, *Legal Impacts and Challenges Facing Saudi Foreign Direct Investment Law: Reforming Saudi Foreign Direct Investment Laws as a Case Study* (Unpublished PhD Dissertation, University of Portsmouth 2012)

Saleem AM, *Finality of Awards: Is It the Key Feature of the New Saudi Arbitration Law that Will Put the Country in the Global Map of Arbitration?* (Unpublished PhD Dissertation, Glasgow University 2013)

Solaim SA, *Constitutional and Judicial Organization in Saudi Arabia* (Unpublished PhD Dissertation, Johns Hopkins University 1970)

Web Articles

Agnihotri AK, 'Tribunalisation of Justice' (*The RTT*, 2017) <<http://thertt.com/Articles/daf780fe-3dd7-46ab-83cf-5b7b99c15ded.html>> accessed 14 November 2019.

'Aiming for Consistency in Arbitration' (*LexisNexis*, 9 October 2013) <https://www.cov.com/files/Uploads/Documents/Aiming_for_Consistency_in_Arbitration.pdf> accessed 14 November 2019.

Al-Ghamdi M and Neufeld PJ, 'Saudi Arabia' (2018) 10 *The Dispute Resolution Review* <<https://thelawreviews.co.uk/edition/the-dispute-resolution-review-edition-10/1166494/saudi-arabia>> accessed 14 November 2019.

Al-Mhaidib MI, 'Arbitration as a Means of Settling Commercial Disputes (National and International) with Special Reference to the Kingdom of Saudi Arabia' (1997) *Edinburgh Research Archive* 1, 14. <<https://www.era.lib.ed.ac.uk/handle/1842/7243>> accessed 14 November 2019.

Ansary AF. 'A Brief Overview of the Saudi Arabian Legal System' (*GlobaLex*, 2008) <http://www.nyulawglobal.org/globalex/Saudi_Arabia.html> accessed 14 November 2019.

Barker M, 'The Emergence of the Generalist Administrative Tribunal in Australia and New Zealand' (8th Annual AIJA Tribunal's Conference, 9 June 2005) <http://www.sat.justice.wa.gov.au/_files/JBspeechGeneralistAdministrativeTribunal.pdf> accessed 14 November 2019.

Beswetherick M and Alsaab S, 'The New SAMA Insurance Dispute Committee Rules in the Kingdom of Saudi Arabia' (*Clyde & Co*, 1 April 2014) <<https://www.clydeco.com/insight/article/the-new-sama-insurance-dispute-committee-rules-in-the-kingdom-of-saudi-arab>> accessed 14 November 2019.

Chandrakanthi L, 'Administrative Tribunals Under Indian Constitution: An Overview' (2016) 2(4) *International Journal of Legal Developments and Allied Issues* <<http://ijldai.thelawbrigade.com/wp-content/uploads/2016/07/Chandrakanthi.pdf>> accessed 14 November 2019.

Duru O, 'Administrative Adjudication: Tribunal, Costs and Inquiries in Perspective'. <https://www.academia.edu/6792750/Administrative_Adjudication_Tribunal_Courts_and_Inquiries_in_Perspective> accessed on 14 November 2019.

Ellingham P and Isgar S, *Insurance and Reinsurance in United Arab Emirates: Overview* (Thompson Reuters 2016) <[https://content.next.westlaw.com/Document/I8598550b5ebd11e498db8b09b4f043e0/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://content.next.westlaw.com/Document/I8598550b5ebd11e498db8b09b4f043e0/View/FullText.html?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)> accessed 14 November 2019.

Genn H, 'Tribunals and Informal Justice' (1993) 56 *Modern Law Review* 393, 393. See also Johnson P, 'Tribunal Administration' (2012) <<http://www.peterdjohnson.net/tribunaladmin.htm>>, accessed 14 November 2019.

Hachem W, Wakerly S and Neighbour T, 'Insurance and Reinsurance in Saudi Arabia: Overview' (Thomson Reuters, 1 April 2017). <[https://content.next.westlaw.com/Document/I1525498b9c6d11e498db8b09b4f043e0/View/FullText.html?contextData=\(sc.Default\)&transitionType=Default&firstPage=true&bhcp=1](https://content.next.westlaw.com/Document/I1525498b9c6d11e498db8b09b4f043e0/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true&bhcp=1)> accessed 14 November 2019.

Jacobs E, 'Tribunal Practice and Procedure' (2016) 8 <http://www.lag.org.uk/media/43787/tribunal_practice_and_procedure_sample_chapter.pdf> accessed 14 November 2019.

Kabbani MH, 'Understanding Islamic Law' (*Islamic Supreme Council of America*, 2017) <<http://www.islamicsupremecouncil.org/understanding-islam/legal-rulings/52-understanding-islamic-law.html>> accessed 14 November 2019.

Kuttner TS, 'Administrative Tribunals in Canada' (*The Canadian Encyclopaedia*, 20 March 2017) <<http://www.thecanadianencyclopedia.ca/en/article/administrative-tribunals/>>, accessed 14 November 2019.

McLintock AH, 'Administrative Tribunals', *An Encyclopaedia of New Zealand* (1966); Law Commission, *Tribunals in New Zealand* (Wellington 2008) <<http://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20IP6.pdf>> accessed 14 November 2019.

Morse B and Lavoie M, 'When Should Courts Defer to Administrative Tribunals – the Consultation Doctrine' *Spectrum* (2005) <https://www.researchgate.net/profile/Bradford_Morse/publication/228188218_When_Should_Courts_Defer_to_Administrative_Tribunals_-_The_Consultation_Doctrine_Spectrum/links/00b7d520af805988a4000000.pdf> accessed 14 November 2019.

Murphy MC, 'The Natural Law Tradition in Ethics' (2002) *Stanford Encyclopedia of Philosophy* (substantive revision 27 September 2011) <<https://plato.stanford.edu/entries/natural-law-ethics/>> accessed 14 November 2019.

Prakash D, 'The Principles of Cooperation: A Look at the ICA Cooperative Identity Statement' (2003) *Participatory Management Development Advisory Network* 1, 4 <http://www.uwcc.wisc.edu/info/intl/daman_prin.pdf> accessed 14 November 2019.

Rottman DB, 'Trust and Confidence in the California Courts: A Survey of the Public and Attorneys, Part I: Findings and Recommendations' (2005) *National Center for State Courts* 1, 24 <https://www.courts.ca.gov/documents/4_37pubtrust1.pdf> accessed 14 November 2019.

Shamsi HA, *United Arab Emirates: Insurance & Reinsurance 2017* (ICLG 2017) <<https://iclg.com/practice-areas/insurance-and-reinsurance/insurance-and-reinsurance-2017/united-arab-emirates>> accessed 14 November 2019.

Tommy V, 'The New Insurance Regulations in Saudi Arabia – Churning Order Out of Chaos' *International Takaful Summit London*, 2009 <<http://www.Takafulprimer.com/Resources/Insurance%20Regulations%20in%20Saudi%20Arabia%20-%20Chaos%20to%20Order.pdf>> accessed 14 November 2019.

Yohannes A and Michael DG, 'The Advantages and Disadvantages of Administrative Adjudication' (2012) <<http://www.abyssinialaw.com/study-on-line/item/314-the-advantages-and-disadvantages-of-administrative-adjudication>> accessed 14 November 2019.

Zarabozo J, 'The Question of Insurance Outside of the "Lands of Islam' (2003) AMJA Conference, Copenhagen 1, 5 < <http://www.jamaalzarabozo.com/audio/insurance.pdf>> accessed 14 November 2019.

Zimmer MB, 'Overview of Specialized Courts' (August 2009) *International Journal for Court Administration* 1
<<http://www.iacajournal.org/article/download/URN%3ANBN%3ANL%3AUI%3A10-1-115882/92/>> accessed 14 November 2019.

Reports

Administrative Review Council, *Better Decisions: Review of Commonwealth Merits Review Tribunal* (Report No 39, Australian Government Publishing Service, 1995)

Albilad Capital, 'Saudi Insurance Sector' (2018) Sector Reports 1, 4 < http://www.albilad-capital.com/Research_EnglishReport/InsuranceSectorQ417EN.pdf> accessed 14 November 2019.

Alinsaf AA, 'Saudi Arabia' (1480) 26 *Ministry of Islamic Affairs* 50

Angle H, Malam S and Carey C, *Witness Satisfaction: Findings from the Witness Satisfaction Survey 2002* (Home Office 2003)

Australia Government, *State Administrative Tribunal* (SAT, 2017) <<http://www.sat.justice.wa.gov.au/>> accessed 14 November 2019.

Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (ALRC Report No 89, Canberra, 2000)

Council of Australian Law Deans, 'Statement on the Nature of Legal Research' (May/October 2005)

Estrin S and Pelletier A, 'Privatization in Developing Countries: What Are the Lessons of Recent Experience?' (2018) 33(1) *The World Bank Research Observer* 65

Faraj M, *Towards New Corporate Governance Standards in the Kingdom of Saudi Arabia: Lessons from Delaware* (SABIC 2014)

General Secretariat of the Committees for the Resolution of Insurance Disputes and Violations, 'Committees Decision' (2017) <<http://www.idc.gov.sa/ar-sa/CommitteesDecisions/Pages/Riyadh.aspx>> accessed 14 November 2019.

General Secretariat of the Committees for the Resolution of Insurance Disputes and Violations, 'About Committees' (2017) <<http://www.idc.gov.sa/ar-sa/Aboutus/PreliminaryCommittees/Pages/default.aspx>> accessed 14 November 2019.

General Secretariat, 'The Guidelines for Clients of the General Secretariat of the Committees for Resolutions of Insurance Disputes and Violations Q&A' (IDC, 2015) 3 < <http://www.idc.gov.sa/en-us/Manuals/The%20Guidelines%20For%20Clients%20of%20the%20General%20Secretariat%20of%20the%20Committees%20for%20Resolution%20of%20Insurance%20Disputes%20QA.pdf>> accessed 14 November 2019.

General Secretariat, 10th Annual Report (SAMA 2014) 4-5 < <http://www.idc.gov.sa/en-us/Downloads/The%20Annual%20Report%20for%202014.pdf>> accessed 14 November 2019 ('2014 Annual Report')

General Secretariat, 11th Annual Report (SAMA 2015) < <http://www.idc.gov.sa/en-us/Downloads/The%20Annual%20Report%20for%202015.pdf>> accessed 14 November 2019 ('2015 Annual Report')

General Secretariat, 12th Annual Report (SAMA 2016) < <http://www.idc.gov.sa/en-us/Downloads/The%20Annual%20Report%20for%202016.pdf>> accessed 14 November 2019 ('2016 Annual Report').

General Secretariat, 'Vision and Methodology' (IDC 2017) <<http://www.idc.gov.sa/en-us/CommitteesDecisions/Pages/VisionandMethodology.aspx>> accessed 14 November 2019.

Genn H et al, *Tribunals for Diverse Users* (Department for Constitutional Affairs Research Series 2006)

Gosling R, *Survey of Litigants' Experiences and Satisfaction with the Small Claims Process* (Department of Constitutional Affairs Research Series 2006)

Government of Canada, 'Administrative Tribunals Support Service of Canada' (2017) <<https://www.canada.ca/en/administrative-tribunals-support-service.html>> accessed 14 November 2019.

Hayward B et al, *Findings from the Survey of Employment Tribunal Applications 2003* (Department of Trade and Industry Employment Relations Research Series 2004)

ICMIF, 'Protecting Lives and Livelihoods' (2015) The ICMIF Global Manifesto <<http://www.mutuo.coop/wp-content/uploads/2015/10/ICMIF-Mutual-Manifesto-first-edition.pdf>> accessed 14 November 2019.

Jha A, *Administrative Tribunals of India: A Study in the Light of Decided Cases* (Working Paper, 2015)

Judicial Studies Board, *Competence Framework for Chairmen and Members of Tribunals* (2002) <www.jsboard.co.uk/publications.htm> accessed 14 November 2019.

Law Commission, Consultation Paper No. 182 & The Scottish Law Commission, Discussion Paper No. 134, 70 <http://www.lawcom.gov.uk/docs/cp182_web.pdf> accessed 14 November 2019.

Law Commission, Insurance Contract Law: Business Disclosure; Warranties; Insurer's Remedies for Fraudulent Claims; and Late Payment (Law Com No 353, HMSO 2014)

Legislation Advisory Committee, *Guidelines on Process and Content of Legislation: 2001 Edition and Amendments* (Wellington, 2007)

Ministry of Justice UK, 'A Survey of Civil Court Users: A Feasibility Study' (2015) *Analytical Summary* <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/449575/civil-court-users-survey.pdf> accessed 14 November 2019.

National Judicial (Policy Making) Committee, *Administrative Tribunals and Special Courts Annual Report 2014* (Secretariat of Law and Justice Commission of Pakistan 2015)

Oxford Business Group, *The Report: Saudi Arabia 2008* (Oxford Business Group 2008)

Oxford Business Group, *The Report: Saudi Arabia 2010* (Oxford Business Group 2010)

Oxford Business Group, *The Report: Saudi Arabia 2013* (Oxford Business Group 2013)

Oxford Business Group, *The Report: Malaysia 2014* (Oxford Business Group, 2015)

Rottman D et al, *Perceptions of the Courts in Your Community: The Influence of Experience, Race and Ethnicity* (National Center for State Courts 2003)

Salama, 'Products' (2017) <<http://www.salama.com.sa/en-us/products.aspx>> accessed 18 April 2017

SAMA, 'SAMA Functions' (2017) <<http://www.sama.gov.sa/en-US/About/Pages/SAMAFUNCTION.aspx>> accessed 14 November 2019.

SAMA, 'Saudi Insurance Market Report' (SAMA 2016) <http://www.sama.gov.sa/en-US/Insurance/Publications/KSA%20Market%20Report_2015_English-vf.pdf> accessed 14 November 2019.

Saudi Arabian Monetary Authority, 'Rules and Regulations' (2017) <<http://www.sama.gov.sa/ar-sa/Laws/Pages/Insurance.aspx>> accessed 14 November 2019.

Spier KE and Prescott JJ, 'Contracting on Litigation' (2016) Harvard Law School Discussion Paper No. 874 1

'Status: Convention on the Recognition and Enforcement of Arbitral Awards' (New York, 1958) (UNCITRAL, 2017) <http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html> accessed 14 November 2019.

Whitehead E, *Witness Satisfaction: Findings from the Witness Satisfaction Survey 2000* (Home Office 2001)

Wikeley N, *Expertise and the Role of Members* (Bristol Centre for the Study of Administrative Justice 2001)