

PCA's Middle East Outreach Underscores Growing Importance

By **Caroline Simson**

Law360, New York (April 26, 2016, 8:49 PM ET) -- Recent initiatives by the Permanent Court of Arbitration to engage with speakers of Arabic show not only the increasing relevance of international arbitration in the Middle East and Arab world, but also the need for institutions to adapt to those users' needs.

The Netherlands-based PCA announced earlier this month that Saudi Arabia's Prince Bandar Bin Salman Bin Mohamed Al-Saud had met with the PCA's top administrators in late March to discuss the role of the organization in resolving international disputes and to formalize the prince's agreement to fund the translation of the PCA's website into Arabic.

That translation is just the first of a handful of projects the prince has agreed to back, which will include the translation of selected PCA publications that are relevant to the Arab world and a "capacity-building project" for young legal professionals from Arab member states.

For an institution like the PCA, which in recent years has seen its caseload dominated by investor-state arbitrations, such initiatives make sense in the Middle East, where local parties have become increasingly savvy about their international treaty rights. And although investment arbitration is not a new concept in the region, its availability has become more commonly known thanks to many of the high-profile arbitrations that have taken place in recent years, according to Mayer Brown LLP partner Dany Khayat.

In fact, Khayat said, he's noticed an increasing trend among clients and investors from the Middle East to come to the firm with knowledge in hand that they may have rights under an investment treaty, thanks to consultations with local counsel. As this awareness has increased, he said, so too has the number of investor-state arbitrations in the region brought by Arab investors.

"It's kind of a democratization of investment treaties, that before they needed to go to big international law firms to get advice on them. Now there are local capabilities," he said. "I can say from my experience, even though they may have only invested in their own country or in the Arab world, they now know about certain treaties and they come and ask us whether it's applicable."

That increasing awareness goes beyond investors looking to enforce their rights against states. International arbitration took a big step forward in the region in 2008 and 2009 after the property market in Dubai crashed, according to James Abbott, the head of Clifford Chance LLP's construction disputes practice in the Middle East. Thereafter, local arbitration centers became inundated with

arbitration claims.

"Lots of people who'd never even read their contracts suddenly became aware that they had an arbitration clause," he said.

And as the number of regional cases in the Middle East continues to rise — such as those between an Arab state and an Arab party, or between two Arab parties — it has become more important for the PCA to reach parties in countries like Sudan, Libya and Djibouti, where people may not be as comfortable with English or French. Its partnership with Prince Bandar is an effort in that direction.

Nor are the PCA and the prince alone in their push. Nations like the United Arab Emirates began taking steps years ago to ensure that multinational companies could resolve disputes under the familiar auspices of international arbitration. Such initiatives included its launch of the Dubai International Financial Centre, which is an independent jurisdiction within the UAE that operates under its own common-law based legal system and regulatory framework.

Within the DIFC is the Dispute Resolution Authority, which in November formalized its relationship with the London Court of International Arbitration to form the DIFC-LCIA Arbitration Centre. Indeed, there's long been a sense among Middle Eastern countries eager to draw in more investment that a stable international arbitration system is a necessity.

"All countries that want to be seen as players on the international stage want to have an internationally recognized form of alternative dispute resolution," said Abbott.

In a way, the PCA's outreach to Middle Eastern parties and countries is the mirror image of that, said Baker Botts LLP partner Seth Taube.

"This is the arbitration system trying to develop local acceptance," he said.

According to the International Bureau of the PCA, the prince's visit is part of a larger initiative by the PCA to foster closer cooperation with the Arab arbitration community. In October, PCA officials visited Kuwait to meet with Prime Minister Jaber Al-Sabah, Minister of Foreign Affairs Sabah Al-Sabah, and Speaker of Parliament Marzouq Al-Ghanim, where they discussed a possible host-country agreement, by which the PCA could offer the full benefit of its services in that country.

Earlier projects have included the translation of the 2012 PCA Arbitration Rules into Arabic through a grant from the Kuwaiti Ministry of Justice.

In an email, a spokesperson from the PCA's International Bureau noted that since it is an intergovernmental organization with a global reach, the institution strives to reach out to all regions in an effort to further its objectives. Discussions between the PCA and its Arab member states have been ongoing for quite some time, the representative said.

"By making its services available to the Arabic-speaking world, e.g., by providing training to young legal professionals, the PCA is fulfilling the objectives set by its founding fathers in 1899 and 1907," the organization said in a statement.

Such outreach has become a necessity as international deals increasingly involve stakeholders who hail from outside the traditional centers of business, Taube said.

"Business centers around the world are slowly shifting to non-Western venues. It's clear that Shanghai and Mumbai will play in the next century as big as role in the economy as New York and London do today," he said. "Where better than in the area of traditional Western-facing contracts where arbitration was mandated to reach out and say, 'Hey, we want you to be part of the process.' It's the right thing for the PCA to do."

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