

# “The Extent Of Commitment To The Principles Of Transparency And Confidentiality In Commercial Arbitration” “A Study In The Saudi And Comparative System”

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*Abstract: Confidentiality in arbitration is its unique and exclusive advantage .It is also considered one of the factors that attract foreign investments whose disputes are often required to be resolved through arbitration. However, the international investments in which the state is a party, confidentiality does not have the same degree of commitment compared to the commitment to transparency in investment disputes. In international investment treaties, confidentiality should be excluded as foreign investments, in which the state is often a party, are always associated with the public interest of the host state, and is subject to the influences of public policy and public opinion, and hence transparency is an inevitable requirement.*

*Adopting transparency to the required extent in resolving disputes through arbitration and disclosure of its results and the progress of its procedures inevitably leads to the stability of capital and attracting more capital to the country incubating foreign investments, as long as such transparency is positive and fair. However, transparency and absolute disclosure cannot be adopted regarding the disputes raised in the field of commercial arbitration. As the reputation of the litigant parties and their financial positions are considerably and directly affected by what may be reported in terms of news. This may lead to tremendous economic losses and the reluctance to invest in such countries, and to other further negative consequences resulting from the absolute disclosure and announcement of everything that is raised thereof.*

*Accepting or rejecting transparency against confidentiality of arbitration, especially in the field of international investment, is not a recent disagreement, but rather an inherent disagreement between the two principles, confidentiality and transparency.*

*Key words: arbitration disputes - transparency - confidentiality – arbitrator*

## **INTRODUCTION**

Confidentiality in arbitration has become a means to settle disputes as a substitute for the state's judiciary, and then it can be agreed that it is confidential or disclosed according to the desire of the litigant parties, and that it is not related to the general interests of society, as the two parties agree on the applicable law and the arbitrators they select, or by whomever they specify to assume such task. That is to say disclosure is a necessity for the ordinary judiciary, except in very narrow conditions and for certain parts of the litigation process. Actually, there is no confidential court ruling, unlike arbitration in which confidentiality is an

important feature in which arbitration is an important advantage in which arbitration surpasses the ordinary judiciary and meets the requirements of whoever specifies this path to settle disputes. Commitment to confidentiality is one of the principles that is historically associated with the emergence of the arbitration system, and is committed to its ruling. Arbitration is a type of private court that the litigants present their dispute to and wish that it stays confidential within a specific scope. This meets the desires of the owners of commercial transactions, and their attitude to take the arbitration path to adjudicate the disputes arising from their activities so that their actions remain confidential due to important considerations they have, and disclosing them in the courts of justice harms their interests. In fact, the principle of the merchants is the desire to continue their activities despite the presence of problems<sup>1</sup>.

The research problem revolves around the lack of a clear legal vision of the extent to which the two principles can be separated in the field of arbitration, especially those related to disputes affecting public interests in the state. Does the principle of confidentiality surpass transparency in this regard or the opposite? As these principles, the extent of commitment to them, and the preponderance of one principle over the other have important consequences that affect the status of arbitration as an alternative means of dispute settlement.

### **1- The development of the commitment to transparency has developed against the confidentiality of commercial arbitration:**

The principle of confidentiality in arbitration is an original principle<sup>2</sup> and has been affirmed by many international agreements<sup>3</sup>, and enjoys its deserved status in the Saudi systems through the new arbitration system, as it was stipulated in Article (2/43) that arbitration rulings may not be published without the consent of the two litigant parties. The guidelines for the terms of dispute settlement issued by the Saudi Center for Arbitration also dealt with the requirement of confidentiality in arbitration regarding the center and the litigant parties to the dispute<sup>4</sup>.

As for the arbitration rules and the mediation rules issued by the Center in Shawwal 1437 AH, Article 38 obliges both the arbitrator and the administrative official not to divulge the information that has been disclosed by the parties or witnesses. This commitment extends even to the arbitration ruling, unless the law requires otherwise. This is not limited to protecting confidentiality, but it extended to authorizing the rules of the Saudi Center represented in the Arbitration Board to issue orders related to confidentiality in arbitration and every other issue related to it and to take the necessary measures to maintain confidentiality unless the litigant parties agreed otherwise<sup>5</sup>.

We believe that setting a legal fence to protect the arbitration ruling from publishing necessarily extends to the procedures, which are a priority because they contain information and facts presented and discussed and are of considerable confidentiality.

As arbitration has gone viral in investment disputes, where the states are parties to it, whether they are investors or incubators for the investments, the principle of confidentiality in resolving arbitral disputes in most of these cases cannot be maintained in its absolute form as the purpose of the commitment to confidentiality may turn into causing harm when the issue of the dispute is related to the public interest. Therefore, the arbitration process cannot continue surrounded by traditional confidentiality<sup>6</sup>.

Perhaps this explains why many agreements have embraced the principle of transparency in arbitration related to the international investments, with the aim to fight corruption through international investments for interests other than the supreme interests of the state. Hence, all government activities and investments are subject to international transparency standards, in the manner that activates the role of monitoring all that surrounds this type of investment, especially if it is linked to a country of one party and natural persons or entities that are not countries of the other side. This appears in the developing countries in which the goal of the foreign investor is only to achieve profit unilaterally or unfairly. In this case, transparency becomes a security fence to prevent such practices that are often done in the darkness<sup>7</sup>.

Confidentiality in arbitration and its contradiction with the principle of transparency raises a dispute between jurists who support and those who oppose embracing this principle in arbitration. As one aspect of jurisprudence<sup>8</sup> believes that confidentiality in arbitration is an exception to the public interest and contradicts the specificity of this manner of resolving such disputes. We believe that considering arbitration as a special way to settle disputes may not only be specified by the litigants for the sake of speed, but it may be for the purpose of confidentiality more than any other motive depending on the type of dispute, for instance, the dispute which is related to international investments in sensitive areas such as technology transfer.

Despite the great value of commitment to confidentiality, it does not appear with the same force in international investment disputes, especially as we have already indicated if they are attached to the public interests of countries. Accordingly, one of the most important advantages of arbitration is relinquished, which is confidentiality against transparency.

Nevertheless, a part of jurisprudence confirms that more than half of the arbitration rulings are actually published with the consent of the litigants<sup>9</sup>. In this regard, the International Court of Arbitration affirmed the commitment of the parties to respect the principle of confidentiality regarding the documents presented or used during the course of the proceedings and sessions, in the ruling issued in September 2006 in the case of (Brwater Gauff v. Tanzania).

This was not always the case, as the position of the judiciary was not consistent in this regard, as some arbitration courts ruled that there is no commitment to confidentiality<sup>10</sup>.

We believe that changing positions regarding the commitment to confidentiality or relinquishing it is mostly due to the will of the parties. That is to say that resorting to arbitration is not in all cases with the aim to preserve the confidentiality of the dispute, as speed may be the most encouraging motivation, as well as the desire not to litigate before the national courts in a country especially if the dispute is international and it is not necessarily out of the commitment to confidentiality. Therefore, justice in any form, whether in the form of a court ruling or an arbitration ruling, cannot remain within the scope of confidentiality, but the arbitration has considerable privacy in selecting the arbitrators, the applicable law and the venue of arbitration. After that, the litigant parties agree to publish the ruling, because the parties willing to do so. Therefore, litigant parties' dominance over the dispute regarding all its details is what gives them the right to keep the rulings confidential, as well as the stages of arbitration, and not any other will with the difference of motives in each case separately and

according to the external influences, if the subject of the dispute is related to the public interests of states, and here the matter differs<sup>11</sup>.

The Chamber of Commerce regulation has dealt with the arbitration situation with flexibility in line with its nature as a means of agreement to settle disputes, whether the issue is in the light of relative transparency which is relevant with the nature of the dispute or the confidentiality that the parties agreed upon in advance or imposed by the nature of the dispute subject to arbitration.

In the midst of this disagreement, confidentiality has remained the basis of arbitration and not an exceptional case. However, confidentiality and its commitment become an exception in other cases. The commitment to transparency in the event that the dispute is submitted to the national judiciary obliges one of the litigant parties, as an exception, to inform the other opponent party of the documents under their control. This exception is justified on the grounds of the rights of the defense, as well as in the case where the arbitration procedures are running in parallel with the judicial procedures.

Likewise, in the case where the states are parties to the arbitration, they are obliged to disclose some documents, in the case of arbitration in international investment disputes, or in commercial disputes in accordance with the law that protects freedom of information for employees.

We have not found in the Saudi system what obliges the commercial companies to announce facts that have an impact on the company's financial status, on top of which are arbitration rulings issued in favor of or against the company or even disputes that have not been finalized.

We believe that embracing the principle of transparency in commercial arbitration depends primarily on the will of the litigant parties and the arbitration issue and its nature, if it is a private arbitration between private parties, whether natural or legal persons or it is arbitration in investment disputes related to the public interest of countries. In the first case, the will of the parties prevails and imposes a degree of confidentiality as they desire, unlike the second case, in which confidentiality may represent an infringement on the right of society to know what it should be divulged. In addition, we believe that disputes related to companies listed in the stock market must be subject to what is required by the interest of shareholders and stakeholders in the light of confidentiality or transparency and not embracing one principle on the expense of the other.

As for the absence of the Saudi regulator's opinion, we believe that it would have been more appropriate to set rules that have a generality with respect to the two principles or prohibit the disclosure of confidentially related to the arbitration process and at the same time enhance transparency in what should be a degree of transparency with regard to some actions.

## **2- Reconciling commitment to confidentiality and the principle of transparency in the arbitration stages:**

The commitment to confidentiality in arbitration issues, whether in the course of the lawsuit or regarding the arbitration ruling, is not within an absolute framework defined by permissibility or prohibition. So, it cannot be asserted that it is mandatory for either of these

two opposing directions, especially, if the regulations do not have a clear rule in this regard. So, it has become a must to reconcile these two opposing directions according to whatever the interest requires and whatever surrounds each aspect of the legal rules that permit or prohibit it. Matters become more complicated and problematic if international institutions are satisfied with what promotes standardization of international trade principles, and are not exposed to the issue of embracing confidentiality or transparency in the field of arbitration to resolve their disputes.

The fields of international trade are related as a general principle to transparency in economic activity and are protected by legislation in most comparative laws. As for transparency in arbitration, it cannot be determined. Such trends are contradictory and divergent, and we have not found a text in any of the comparative systems that elevate confidentiality in arbitration to the level of a strong or general legal obligation enforced by the law, whether in terms of procedures or ruling. In essence, the will of the parties and the nature of the dispute submitted to arbitration and the circumstances surrounding it, are saying their word. However, it has been traditional to consider the principle of confidentiality of the arbitration procedures as one of the fundamental foundations upon which this system is based, which prompts the litigant parties to prefer it over the state's judiciary, which they consider defective due to its overt sessions from their point of view.

Accordingly, the litigant parties prefer to lose a case over losing their commercial secrets that could be preserved if they submitted their disputes to an arbitration court<sup>12</sup>.

Some Arab legislations have stipulated the confidentiality of the hearings and sessions, such as Article (29/3) of the Syrian Arbitration Law No. 4 of 2008, and Article (38) of the Yemeni Arbitration Law No. 22 of 1993 AD, however, we have not found an example of similar articles in the Egyptian arbitration law or the new Saudi arbitration system, which implicitly stipulates this obligation in Article 39/1, as well as its Egyptian counterpart, which is void from any indication of the confidentiality or openness of arbitration hearings and proceedings.

We believe in the preponderance of transparency as long as the issue is related to the public interests, as long as the arbitration is related to international investments between countries, or the interests of natural or legal persons, as is the case for companies listed in the stock market where information in this complex world represents a huge value that affects negatively or positively on a tremendous segment of interests, otherwise there will be no benefit from a commitment to disclosure and transparency in some cases, and a commitment to confidentiality in other cases, with regard to the information of companies listed in the stock market, and to the extent that the stakeholders require.

If the commitment to confidentiality is a moral obligation, it is the responsibility of the arbitrator in the first place, and it is consistent with the litigants' intention to resort to it to settle disputes in a scope that does not affect their interests. This statement is relevant to the control of the parties will on whether or not the arbitration is confidential. This is what the UNCITRAL Model Laws for Commercial Arbitration was committed to in 1985 and which was adopted by a considerable number of countries.

There is no doubt that the need has ever become more urgent to control the components and scope of the feature of confidentiality and reconsider the requirements for transparency against confidentiality in arbitration, especially if it is international and affects the public interests<sup>13</sup>.

The attempt to reconcile the commitment to confidentiality and the principles of transparency in the arbitration stages and with regard to the ruling is what demonstrates the resilience of any of the two principles against each other in the arbitration litigation stages.

## **2-A – Reconciling the commitment to confidentiality and the principles of transparency in the (pre-ruling) stage:**

The arbitration procedures include two phases before the issuance of the ruling. The arbitration passes through a holding phase, then if the arbitral litigation is valid, the process phase begins, which by its nature contains a score of procedures and interferences such as, making use of experts, witnesses, translators and others as per the need the proper conduct of the arbitration process. Should the hearings be held before the ordinary court, litigation should be overt, and they should not be confidential unless otherwise permissible according to the stipulation of the law, the arbitration hearings sessions are confidential in principle. As confidentiality guarantees for the litigating parties to preserve their transactions hidden from others, and sometimes even from their opponents as well<sup>14</sup>. Settling the dispute through arbitration is the one that preserves the parties' confidentiality and their reputation, and this appears in its stages overall<sup>15</sup>.

The source of confidentiality in arbitration is the agreement, and the parties' desire to preserve the confidentiality of the dispute in terms of the procedures and the ruling. The matter does not differ whether it was agreed to committing to confidentiality before the start of the dispute or during the course of the arbitration procedures. Therefrom, the source of the commitment to confidentiality in arbitration becomes clear and the commitment to transparency imposed by the binding rules according to the legal stipulations. This difference does not fundamentally give force in favor of the principle of transparency over the principle of confidentiality in arbitration.

However, it is the predominance of the nature of the public system over the rules governing transparency is the ones that gives priority to this principle over the commitment to confidentiality in arbitration if it is concerned with the public interests affecting an unspecified audience.

In the midst of this conflict between ideas and practical application, and not considering a unified principle used to settle the conflict between the two opposing principles, we find that some arbitration texts stipulate a set of differing legal obligations, such as the OMPI Regulations, in Article 75 regarding the declaration of the arbitration ruling, being a legal obligation. The issue was not limited to the mere regulations stipulations, but rather the judicial application has not considered a unified principle to rely on<sup>16</sup>.

A part of jurisprudence<sup>17</sup> believes that it is possible to strengthen the principle of confidentiality in commercial arbitration by referring to the arbitration agreement between

the two parties regarding all arbitration issues and the applicable law, as well as the obligation imposed on the parties to disclose in the event that they are companies listed in the stock market, for instance. However, we believe that such solutions do not provide a robust ground through which we can consider a unified principle, but rather they leave the matter for each case separately, which ultimately leads to the issuance of separate rulings according to the adopted different legal rules, which in turn leads to disagreement and not to consider a unified ruling.

At the stage of the procedures during the course of litigation arbitration, we believe that the preponderance of confidentiality or transparency depends on the will of the parties and the nature of the dispute. The legal rules do not oblige the principle of confidentiality to prevail over transparency or vice versa. In addition, the obliged companies do not need to disclose a certain amount of information at these stages as long as the ruling has not been issued so far. On the contrary, this may be a means of confusion and destabilization of stable financial centers through opening a door for fraud. Accordingly, we believe that during the stage of procedures, it is not permissible in whatsoever manner to divulge any information without the consent of the litigating parties to the dispute.

But this statement cannot be accepted in the case in which one of the litigant parties requests the disclosure of the arbitration dispute, as soon as the disclosure is made by the said party alone without no agreement between the said party and the other party, in this case the said party is not responsible unless the purpose of disclosure is to harm the other party.

Here, the question arises in the cases in which the ordinary judiciary interferes with the arbitration court in some procedures. Does arbitration impose its advantages on what the ordinary judiciary does? Actually, arbitration needs the intervention of the ordinary judiciary at all the stages of the arbitration process, even if the degree of interference varies as per the different systems<sup>18</sup>. Then, a strong opposition may occur between the principle of disclosure in the judiciary and the principle of confidentiality in arbitration. We do not believe that arbitration, with its features related to confidentiality may overrule the requirements of disclosure. The judiciary does not intervene on its own, and therefore the rules in force before the state's courts must be considered, and not to impose special rules on it outside its legal system.

## **2-B- Reconciling the commitment to confidentiality with the principle of transparency regarding the arbitration ruling:**

The provisions of the Saudi arbitration system are clear regarding not permitting the publishing of arbitration rulings except with the consent of the two litigating parties. This is also in line with the Egyptian legislation in Article 44/2 of Law No. 27 of 1994 AD. Likewise, the rules of the American Arbitration Commission do not permit publishing the arbitration ruling without the consent of the litigant parties. As for the arbitration rules of the World Intellectual Property Organization, they prohibit the parties from publishing the arbitration ruling except in specific cases with the consent of the litigant parties or appealing against the ruling before a judicial authority, or if there is a necessity compelling the disclosure of this ruling, also if the applicable law requires the publication of the ruling if publishing is necessary for a case brought before the judiciary, and in the last two cases, the arbitration center or the arbitrator can disclose the ruling<sup>19</sup>.

This approach is considered a mediator between the permissibility of publishing arbitration rulings and their prohibition, without giving preponderance to either the confidentiality clauses in arbitration or the principle of transparency. On the other hand, we find some other legislation which does not deal with such rules. This is justified by giving a bigger space to fresh emerging issues and the impositions of circumstances and the nature of arbitration considering the litigation or dispute and the other factors associated with it which may oblige the publishing of the ruling or may impose its confidentiality. In addition, we believe that what is considered by an aspect of jurisprudence that the supposed confidentiality in arbitration must be interpreted within the limits of its purpose, which is not to inflict harm to the litigant parties<sup>20</sup>.

Despite the relevance of this opinion, the purpose of the litigant parties may not be the desire to protect and not to harm their interests, but rather the desire to make benefit of the arbitration advantages and then resort to it thereof. This desire is not required to be explicit, as the implicit will for not publishing the arbitration rulings, according to our belief, was already available by resorting to arbitration as a way to resolve the dispute. This desire must be respected in any case whatsoever, otherwise comparative legislations would not stipulate that this is permissible as soon as publishing is approved, which assumes the presence of an implicit agreement for not publishing that should not be violated by claiming no harm to the litigant parties to the dispute.

Relinquishing the confidentiality of arbitration and permitting the publishing of arbitration rulings by the will of the litigant parties may be circumvented by appealing against the arbitration ruling before the ordinary court. Therefore, the desire of the other party who wishes to keep the arbitration dispute confidential is not respected, which is an issue that some of the judicial rulings were aware of when they authorized the judge keeping the decisions to settle disputes of the arbitration rulings confidential with the aim to prevent fraud thereof<sup>21</sup>.

The Saudi and Egyptian arbitration systems are devoid of this rule, which we believe is of great importance to cement the door to circumventing confidentiality agreements in arbitration disputes, which often results from failure to maintain them.

Violation of the agreement and publishing the arbitration ruling cannot be considered a reason for its nullity. This is supported by judicial rulings in many situations, for example, the Swedish Supreme Court, with the aim to preserve the arbitration ruling and block the fraud by nullifying the arbitration rulings by publishing them in violation of the agreement<sup>22</sup>.

We believe that the confidentiality of the arbitration ruling in this way does not constitute a barrier to the principles of transparency. Eventually, it is not possible to revoke the arbitration ruling for violating the obligation of confidentiality, because publishing is not related to the composition and validity of the ruling. Whereas, transparency remains a legal obligation imposed by the force of law in certain cases, and then it transcends the obligation of confidentiality. This is not in the case that the disclosure obligation is an explicit legal obligation, as the circumstances of the dispute may relate to the public interests of the state. Then, it becomes the reason for its attachment to the interests of the entire society, and thus confidentiality cannot transcend disclosure of what is going on, including arbitration procedures or its ruling.



### **3- Reconciling the principle of confidentiality and transparency on the international level:**

The entry of either the state, a public law personality, or one of the giant economic entities, as a party to dispute or any activity in which the dispute is conditional on arbitration is a reason for the imbalance of the relationship between the two litigant parties to the said dispute and in all its stages because one of the parties possesses the enormous capabilities that the other party lacks, though the truth is contrary to what is apparent, if we assume that a personality of the public law or the state are against a person or a company, the influence of the state may imbalance the arbitration ruling. However, the truth is otherwise, in some cases the investing companies are giant economic entities that have great influence beyond the capabilities of some states - which are often one of the developing countries - in which the investment is made ,and they possess strong tools to the extent that some of these companies have a huge capital surpassing the budgets of these countries, which are in need of the flow of capital to achieve their economic development and overcome their grinding crises and therefore are subject to a lot of injustice by the investors<sup>23</sup>.

Perhaps the presence of a foreign element in any legal relationship primarily raises the issue of conflict of laws that must be applied to the dispute. Then, there is a question arising about the law applicable to the agreed confidentiality obligation<sup>24</sup>.As it may be the same law that governs the arbitration agreement, or the relationship of the parties and arbitrators, or the law that governs the procedures, or the law that governs the matter that has been agreed to keep confidential.

Sometimes more than one law is applied to parts of the dispute, and the issue of confidentiality agreed upon is subject to the law applicable to that part, whether it relates to the procedures or the arbitration ruling in the country in which the procedure takes place, out of respect for the will of the litigant parties.

Should the will of the litigant parties be taken into account, the laws that make the commitment to transparency mandatory must also be taken into account. As the goals pursued by the laws regulating the market transparency are often imperative and relate to the public order and should not agree to violate them and should always direct them to achieve the public interests.

These issues are related to organizing market information and achieving the purpose of determining this commitment with the aim to protect the economic organization of the state, and then we find a difference in the legal systems that support confidentiality in arbitration or transparency, or that neutral systems which did not regulate them with the aim to create a wider horizon that accommodates whatsoever potential issues may arise.

Whatever the legal status, there are justifications that support the development towards transparency in arbitration disputes in the field of international investment because it is related to the public interest .This attitude finds its echo not only as a justification motivated by the public interest, but also as an independent attitude that supports transparency in itself being the original principle and the best for achieving the optimal legal status<sup>25</sup>.

In fact, we believe that the conflict between giving priority to one of the two principles ultimately leads to transparency overpowering confidentiality if it is related to the public

interest. In general, arbitration is a path that does not follow the judicial organization in the state, in other words, in which the state's authority does not appear, and is subject to special agreements, and protects private interests and confidentiality. However, we do not absolutely support and favor the collective interest over the private interest, and we believe in the necessity of adopting the principle of equitable distribution of public responsibility, eventually, the public interests outweigh and overpower the private interests, and then transparency overpowers confidentiality thereof.

The conflict between the confidentiality of arbitration and financial disclosure, for instance, in the international framework often ends in favor of this latter commitment which in itself is not surprising, because the principle of confidentiality remains subject to the private interest, whereas, the commitment to transparency protects the public interest with the need to restrict the overpowering of transparency over confidentiality. This preponderance of confidentiality is justified in light of respect for the two principles, even if transparency is favored.

This predominance of confidentiality is aiming to nothing but respect for the general interest of the group. That is to say that everyone party commits to confidentiality has their strong reasons and compelling arguments supporting their commitment to it, which are often made by tycoon economic entities that keep their confidentiality, plans, methods of financing them, and much confidentiality which cannot be disclosed, otherwise they will be considerably harmed in a world in which information is considered the power of the market. Considering arbitration to be public and not being surrounded by a fence of confidentiality wastes the true value of confidentiality of arbitration and harms the interests of the arbitrated litigants parties. This is what some arbitration systems have predicted with the aim of preserving stable legal positions and preventing defamation and causing harm to the other party<sup>26</sup>.

Every arbitration system, whether domestic or international, stipulates guarantees to protect confidential information. Actually, states are reluctant to disclose internal, administrative and organizational structures for not negatively affecting their reputation as hosts of foreign investment and consequently leading to the creation of potential domestic political opponents<sup>27</sup>.

The difference in the legal status regarding the commitment to confidentiality in the comparative legal systems at the international and domestic levels requires establishing a legal regulation with a considerable degree of flexibility with respect to organizing the issue of confidentiality in arbitration being its most important feature. This attitude is supported by a considerable part of the jurisprudence<sup>28</sup> that believes that wasting the advantage of confidentiality in arbitration is a waste of arbitration being a special path for settling disputes which contains much flexibility and achieves multiple interests for the litigant parties to the dispute submitted to arbitration.

## **CONCLUSION:**

Through the research, it was found that confidentiality in arbitration is an important and fundamental obligation, whether it is in relation to the arbitration procedures or in relation to the arbitration ruling. However, the Saudi arbitration system has not dealt with it with sufficient regulation.

Through the above review, the researcher concluded a score of results, they are as follows:

- 1- The Saudi arbitration system did not stipulate that the assumed or agreed-upon obligation of confidentiality may be relinquished as long as the issue is related to the public interest and other circumstances that require this, as if the subject of the dispute was a crime.
- 2- The Saudi arbitration system did not stipulate that the issues that are presented before the judiciary as an assistant to the arbitration committee should be kept confidential as long as they are not related to the public interest, in order to take into account the advantage of confidentiality and not to waste it in all cases so that the judiciary is not misused a means to fraud the confidentiality of the arbitration.
- 3- It is better to set special rules that ensure the preservation of the confidentiality of arbitration and the commitment of the arbitration authorities thereof in a clear legal cover, such as deciding criminal penalties relevant with the nature of the committed error, or including the defaulting arbitrator on the arbitrators' black lists.
- 4- The Saudi system did not impose penalties on arbitration authorities on breaching the commitment to confidentiality in arbitration disputes.

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