

# OVERVIEW OF ARBITRAL INSTITUTION RULES IN THE UAE & KSA AND PRACTICAL CONSIDERATIONS

 **ADDLESHAW GODDARD**  
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The 1 February 2024 launch of the Abu Dhabi International Arbitration Centre (branded as arbitrateAD) confirms a regional trend of establishing or refreshing arbitral institutions in the UAE, KSA and wider GCC. This is in response to the significant growth in large disputes in the GCC region. This trend confirms the maturity of the GCC arbitration market and has provided jurisdictions the confidence to “go out on their own” and establish institutions, rather than rely on traditional platforms.

As new market participants enter the region, it is crucial that they are familiar with the rules of these arbitral institutions which are increasingly being incorporated into commercial and construction contracts in the region.

In the table included with this article, we compare key provisions in the rules of the following arbitral institutions and highlight practical considerations for users:

- Saudi Centre for Commercial Arbitration (**SCCA**) Arbitration Rules 2023;
- Dubai International Arbitration Centre (**DIAC**) Arbitration Rules 2022;
- arbitrateAD Arbitration Rules 2024; and
- ICC Arbitration Rules 2021.

Whilst there is a significant degree of commonality between the rules of these arbitral institutions (reflecting the drive for harmonisation in international arbitration), there are some differences. For example:

- The DIAC and arbitrateAD rules provide for default seats for the arbitration (should the parties not expressly agree one in the arbitration agreement) which is not the case with the other two institutions.
- The SCCA rules' default position is that an arbitration may be decided “on a document only basis” unless the Tribunal agrees to hold a hearing – which is not the default with the other institutions. It is however reflective of a trend for quick and cost-effective arbitration procedures.
- All four arbitral institutions offer expedited arbitration procedures for low value disputes – however the monetary thresholds for the application of such rules differ as also the time limits for concluding such procedures.
- There are also differences in time limits for raising a jurisdiction challenge – the ICC has no express time limit, DIAC and ArbitrateAD require the challenge to be raised in the initial defence to the claim (or counterclaim) and the SCCA is stricter with a challenge required in the answer to the request to arbitration.

Overall, the focus on efficiency and cost effectiveness promoted by the above arbitral institutions demonstrates a willingness to be at the forefront of global arbitration in partnership with the growth of the GCC as a whole.

## AUTHORS



### ARUN VISWESWARAN

Partner, Construction and Engineering  
+971 4 3506 436  
+971 5 0455 9270  
A.Visweswaran@aglaw.com



### TOM LANGSFORD

Managing Associate, Construction and Engineering  
+971 4 3506 446  
+971 5 2273 4149  
T.Langsford@aglaw.com

## KEY CONTACTS



### BEVAN FARMER




Co-Head of Construction and Engineering, Middle East  
+971 4 3506 420  
+974 6671 0301  
B.Farmer@aglaw.com





### STEPHEN BURKE


Co-Head of Construction and Engineering, Middle East  
+971 4 3506 406  
+971 5 0653 9202  
S.Burke@aglaw.com





	ICC ARBITRATION RULES (2021)	SCCA ARBITRATION RULES (2023)	DIAC ARBITRATION RULES (2022)	ARBITRATEAD ARBITRATION RULES (2024)	COMMENT	
<b>PRE-ARBITRATION AND COMMENCING THE ARBITRATION</b>						
	<b>Default Seat of Arbitration</b> (determines the law governing the arbitration)	<b>No default seat</b>	<b>No default seat</b>	<b>Place/venue of arbitration, if not specified, Dubai International Financial Centre</b> (Article 20.1)	<b>Place/venue of arbitration, if not specified, Abu Dhabi Global Market</b> (Article 22)	Parties should take care to expressly state the seat of arbitration in arbitration agreements to avoid jurisdictional conundrums.
	<b>Default Language of Arbitration</b>	<b>No default language.</b> In the absence of an agreement by the parties, shall be determined by the Tribunal. (Article 20)	<b>No default language.</b> Parties can agree the language failing which the case Administrator shall decide the language initially subject to a final determination by the Tribunal. (Article 23)  Where the ODR expedited procedure applies (disputes less than SAR 200,000), Arabic is the default language.	<b>Default language is that of the arbitration agreement</b> - unless the parties agree otherwise.  If the arbitration agreement is in more than one language – (a) the Arbitration Court shall initially decide the language and (b) the Tribunal (once formed) can finally determine the language(s) of arbitration if there is no agreement. (Article 21)	<b>No default language.</b> Parties can agree the language failing which (a) the initial language shall be determined by the Case Management Office; and (b) following the Tribunal's constitution, shall be decided by the Tribunal. (Article 23)	Where Parties want the arbitration to be conducted in a particular language, it would be prudent to expressly state it in the arbitration agreement. This is equally important for UAE seated arbitration agreements where the default language is Arabic.
	<b>Number and Appointment of Arbitrators</b>	<b>Default Number of Arbitrators – One</b> (Article 12(2))  <b>Default method for three arbitrators</b>  Each party shall nominate one arbitrator in the Request and the Answer respectively. The third arbitrator shall be appointed by the Court.  Any alternative procedure shall result in a nomination of a third arbitrator within 30 days (or such other timeframe agreed by the	<b>Default Number of Arbitrators – One</b> (Article 15)  <b>Default method for three arbitrators</b>  Each party shall nominate an arbitrator no later than 30 days after commencement of the arbitration (unless agreed otherwise). Unless agreed otherwise, the third arbitrator shall be appointed by the SCCA Court.  All nominated arbitrators have to be appointed by the	<b>Default Number of Arbitrators – One</b> (Article 10.2)  <b>Default method for three arbitrators</b>  Each party shall nominate a co-arbitrator in the Request and Answer respectively.  Unless the parties agree otherwise, the co-arbitrators shall agree on the third arbitrator, failure to agree a third arbitrator within 10 days of the date of appointment of the last co-arbitrator results in the	<b>Default Number of Arbitrators – One</b> (Article 13.4)  <b>Default method for three arbitrators</b>  Each party shall nominate a co-arbitrator in the Request and Answer respectively and the Court shall appoint the President.  Failure of a party to nominate results in the Court appointing the arbitrator. (Article 13.6)  <b>Nationality Restrictions</b> - the sole arbitrator or	If Parties want three arbitrators, that should be specified in the arbitration agreement including their method of appointment (if the default method in the rules is not preferred).  Except for the SCCA, where arbitrating parties have different nationalities, there are nationality restrictions on the choice of a sole arbitrator or president of a three-member tribunal. If parties wish to waive this restriction, they could do so




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		<p>parties or fixed by the Court) (Articles 12(4), (5))</p> <p><b>Nationality Restrictions</b> - Court appointed sole arbitrator or president of a three-member tribunal shall not have the nationality of any of the parties subject to limited exceptions or if the parties agree. (Articles 13(5), (6))</p>	<p>SCCA Court. The Court has discretion to appoint directly in exceptional circumstances to prevent unfairness. The Court also has a strike-and-rank list method to appoint arbitrators (based on parties' rankings of a shortlist of candidates). (Article 16)</p> <p><b>No Nationality Restrictions</b></p>	<p>Arbitration Court appointing the third arbitrator (unless the Centre grants additional time). (Article 12.4)</p> <p><b>Nationality Restrictions</b> - a sole arbitrator or chairperson of the Tribunal shall not have the same nationality of a party. Parties can agree otherwise, or the Arbitration Court can waive this restriction in circumstances. (Article 11)</p>	<p>president shall not have the same nationality as any of the parties, unless expressly agreed otherwise by all parties. (Article 13(9))</p>	<p>in the arbitration agreement.</p>
	<b>Time Limit for Jurisdictional Challenges</b>	<b>No express time limit</b>	<b>Time Limit</b> - No later than transmission of the (a) Answer to the Request for Arbitration; or (b) the answer to any other claims. The Tribunal may extend the time limit (Article 24(4))	<b>Time Limit</b> - No later than (a) the Statement of Defence; or (b) any statement of defence to counterclaim (if applicable). (Article 6.4)	<b>Time Limit</b> - No later than the (a) Statement of Defence; or (b) a Statement of Defence to a Counterclaim, unless Tribunal permits (Article 8.5)	The SCCA requires any jurisdictional challenge to be made at the time of the Answer – which is much earlier than the other arbitral centres.
<b>EXPEDITED PROCEDURES AND URGENT RELIEF</b>						
	<b>Expedited Procedures</b> (Shorter procedures for lower value disputes)	<p><b>Can parties opt-out?</b> - yes</p> <p><b>Monetary Threshold</b> -</p> <ul style="list-style-type: none"> <li>less than USD 2 million (arbitration agreement concluded from 1 March 2017 to 31 December 2020); or</li> <li>USD 3 million (arbitration agreements concluded after 1 January 2021)</li> </ul>	<p><b>Can parties opt-out?</b> - yes</p> <p><b>Monetary Threshold</b> - the amount in dispute does not exceed SAR 4,000,000 (approx. USD 1,066,400) (excluding the costs of arbitration).</p> <p><b>Time Limit for Award</b> – no later than (a) 30 days from the date of the close of proceedings; and (b) 180 days from the date the Tribunal was constituted.</p>	<p><b>Can parties opt-out?</b> - yes</p> <p><b>Monetary Threshold</b> – sum(s) claimed / counterclaimed is below or equal to AED 1,000,000 (approx. USD 272,280) (excluding the costs of the arbitration). The parties may agree a different threshold in writing.</p> <p><b>Time Limit for Award</b> - within 3 months from the date of the transmission of the file to the Tribunal (unless extended by the</p>	<p><b>Can parties opt-out?</b> - yes</p> <p><b>Monetary Threshold</b> - the amount in dispute is below AED 9,000,000 (approx. USD 2,450,500).</p> <p><b>Time Limit for Award</b> - within 4 months from the date the case file is submitted to the Tribunal (unless extended by the Case Management Office for a maximum of 2 months).</p>	The expedited procedures apply by default to disputes below the relevant monetary thresholds, but the rules allow parties to opt-out. If parties intend to opt-out, they should state this in the arbitration agreement.





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		<p><b>Time Limit for Award</b> - within 6 months from the date of the case management conference (15 days from the date the file was transmitted to the Tribunal, unless extended by the Court).</p> <p><b>Hearing Rights?</b> - Tribunal may decide the dispute solely on the basis of the submitted documents with no hearing. (Article 30, Appendix VI)</p>	<p><b>Hearing Rights?</b> –Tribunal may decide the dispute on documents only (Appendix II)</p> <p><b>Online Dispute Resolution</b> – applies where (a) the parties agree in writing; and (b) the dispute does not exceed SAR 200,000 (approx. USD 53,000). Default language is Arabic and the Tribunal shall issue a final award within 30 days of its constitution (unless extended by the Administrator in exceptional circumstances). (Appendix IV)</p>	<p>Arbitration Court on exceptional grounds).</p> <p><b>Hearing Rights?</b> - the Tribunal shall decide on the procedure to be adopted. (Article 32)</p>	<p><b>Hearing Rights?</b> -the Tribunal may, decide the dispute solely on the basis of documentary evidence. (Article 36)</p>	
	<p><b>Emergency Arbitrator</b> (Applications for urgent interim measures prior to the constitution of the Tribunal)</p>	<p><b>Can parties opt-out?</b> - yes</p> <p><b>Submission of the RFA?</b> Emergency arbitrator proceedings will terminate if a Request for Arbitration has not been received within 10 days of the application (unless the emergency arbitrator determines otherwise).</p> <p><b>Time Limit for EA decision</b> - 15 days from the date the file was transmitted. (Article 29, Appendix V)</p>	<p><b>Can parties opt-out?</b> - yes</p> <p><b>Submission of the RFA?</b> emergency arbitration shall terminate if a Request for Arbitration has not been received within 10 days of the application. (unless the emergency arbitrator determines otherwise)</p> <p><b>Time Limit for EA decision</b> - 14 days after receipt of the transmitted case file. (Article 7, Appendix III)</p>	<p><b>Can parties opt-out?</b> - yes</p> <p>There are no express time limits for the EA decision. (Appendix II, Article 2)</p>	<p><b>Can parties opt-out?</b> - yes</p> <p><b>Submission of the RFA?</b> a Request for Arbitration must be filed within 30 days from the Emergency Arbitrator’s decision, otherwise the decision shall cease to be binding.</p> <p><b>Time Limit for EA decision</b> - 10 days from the date of their appointment. (Article 35)</p>	<p>For ICC, SCCA and arbitrateAD arbitrations, if a Request for Arbitration is not filed shortly after a request for Emergency Arbitration, the urgent award will not be binding.</p> <p>All of the rules permit the parties to opt-out of these procedures but, in our experience, it is not common for parties to opt-out.</p>

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<b>TOOLS TO INCREASE EFFICIENCY</b>					
 <p><b>Summary Judgment</b> (Early dismissal / disposition of certain claims or defences)</p>	<p>No express summary dismissal provisions. However, the ICC's Practice Note to Parties,<sup>1</sup> recognises the Tribunal's power to consider summary dismissal as part of its case management powers provided it is not contrary to the parties' agreement. (Article 22)</p>	<p>Any party may request the Tribunal to summarily dispose issues of jurisdiction, admissibility or legal merit.</p> <p>Application shall be transmitted within 30 days of the filing of the concerned claim / defence.</p> <p>Tribunal shall issue an order within 30 days of the date it allows the Application to proceed (subject to the Administrator extending up to 15 days in exceptional circumstances) (Article 26)</p>	<p>No express summary dismissal provisions. However, the Tribunal shall ensure that the arbitration is conducted expeditiously, diligently and in a cost-efficient manner. (Article 17.2)</p>	<p>The Tribunal on its own volition or upon application of a party dismiss any claim, defence, counterclaim or reply to counterclaim that is:</p> <ul style="list-style-type: none"> <li>manifestly without legal merit; or</li> <li>manifestly inadmissible or outside of the Tribunal's jurisdiction.</li> </ul> <p>If an application is made for early dismissal, the order / award shall be made within 30 days of the date of filing (unless extended by the Tribunal (max 15 days) or the Case Management Office). (Article 45)</p>	<p>While all of the arbitral rules recognise the Tribunal's powers to summarily dismiss claims and defences, the SCCA and arbitrateAD rules have express provisions dealing with this remedy including time-limits for deciding such applications.</p> <p>This can be a useful tool to focus the arbitration and reduce costs.</p>
 <p><b>Joinder</b> (Joining an additional party to the arbitration)</p>	<p>The Request for Arbitration should be submitted against the additional party.</p> <p>No party may be joined after the appointment of any arbitrator unless:</p> <p>(a) all parties (including the additional party) agree; or</p> <p>(b) the additional party accepts the constitution of the Tribunal and the Terms of Reference (where applicable). (Article 7)</p>	<p>The Request for Joinder shall be submitted to the Secretariat and the other parties.</p> <p>No party may be joined after the appointment of any arbitrator unless:</p> <p>(a) all parties agree (including the additional party) and the additional party accepts the constitution of the Tribunal; or</p>	<p>Prior to the appointment of any arbitrator(s), joinder possible where (a) all parties (including the party to be joined) have consented in writing; and (b) the Arbitration Court is satisfied that the party to be joined may be a party to the arbitration agreement.</p> <p>Following constitution of the Tribunal, joinder requires (a) all parties to have consented in writing and (b) the joining party expressly</p>	<p>A Request for Joinder may be filed prior to the filing of the Answer to the Request for Arbitration.</p> <p>The Court may, in its discretion, join a party to the arbitration if:</p> <p>(a) all parties agree; and</p> <p>(b) the Court is satisfied that the additional party is prima facie subject to the Centre's jurisdiction. (Article 11)</p>	<p>All four arbitral rules allow additional parties to be joined to the arbitration subject to certain conditions.</p> <p>Parties to ArbitrateAD arbitrations should consider any potential joinder applications as soon as the Request for Arbitration is received.</p>

<sup>1</sup> [icc-note-to-parties-and-arbitral-tribunals-on-the-conduct-of-arbitration-english-2021](#)

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			(b) the additional party agrees with the joinder, accepts the constitution of the Tribunal and the Tribunal determines joinder is appropriate. (Article 12)	agreeing to the appointment and powers of the Tribunal and application of the Rules. (Article 9)		
	<b>Consolidation</b> (Merging two or more arbitrations into a single arbitration)	<p>ICC Court may consolidate where:</p> <ul style="list-style-type: none"> <li>the parties have agreed; or</li> <li>all of the claims in the arbitrations are made under the same arbitration agreement(s); or</li> <li>the arbitrations are between the same parties, the disputes arise in connection with the same legal relationship and the Court finds the separate arbitration agreements to be compatible.</li> </ul> <p>(Article 10)</p>	<p>SCCA Court may (at the request of a party or Tribunal) consolidate where:</p> <ul style="list-style-type: none"> <li>the parties have agreed; or</li> <li>all the claims in the arbitrations are made under the same arbitration agreement(s); or</li> <li>the disputes in the arbitrations arise in connection with the same legal relationship and the SCCA Court finds the arbitration agreement(s) to be compatible.</li> </ul> <p>If a Tribunal has been fully constituted, there shall be no consolidation unless:</p> <ul style="list-style-type: none"> <li>all parties agree; or</li> <li>all members of all Tribunals are identical and each Tribunal requests consolidation.</li> </ul> <p>(Article 13)</p>	<p>Prior to the appointment of any arbitrator(s), the Arbitration Court can consolidate if:</p> <ul style="list-style-type: none"> <li>all parties agree; or</li> <li>it is satisfied on a prima facie basis that: <ul style="list-style-type: none"> <li>all claims are made under the same agreement to arbitrate; or</li> <li>the arbitration agreements are compatible and the disputes arise out of the same legal relationship(s) or out of the same transaction (or series of transactions).</li> </ul> </li> </ul> <p>If one Tribunal has been constituted but the other arbitrations are yet to have a tribunal constituted, the appointed Tribunal can consolidate arbitrations upon a party's application.</p>	<p>A party may request that the Court consolidate arbitrations provided that:</p> <ul style="list-style-type: none"> <li>all parties agree;</li> <li>all claims are made under the same arbitration agreement or;</li> <li>the relief sought arises out of the same transaction (or series of transactions) and the arbitration agreements are compatible.</li> </ul> <p>(Article 12)</p>	<p>The consolidation provisions across the four arbitral rules are almost identical.</p> <p>Under the SCCA Rules it can be more difficult to consolidate once one of the Tribunals has been constituted –any application should ideally be made prior.</p> <p>Although consolidation can be a beneficial tool, the factual and legal thresholds are high and there is no certainty that an arbitral institution will permit it.</p> <p>There may also be tactical reasons not to consolidate arbitrations which depends on the facts of each case.</p>



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				Parties can expressly opt-out of consolidation.  (Article 8)		
<b>OTHER KEY RULES</b>						
	<b>Law governing the arbitration agreement</b>  (Important for cross-border contracts)	No specific provisions	The law applicable to the arbitration agreement shall be the law applicable at the place of the arbitration (unless the parties have otherwise agreed in writing). (Article 37)	No specific provisions	No specific provisions	Prudent to specify what law governs the arbitration agreement (which can be the same as or different to the law governing the contract).
	<b>Third Party Funding</b>	<b>Disclosure required?</b> - Yes, of the existence and identity of the funder. (Article 11(7))	<b>Disclosure required?</b> - Yes, of the identity of the funder. (Article 17(6))	<b>Disclosure required?</b> - Yes, prior to the constitution of the Tribunal, a party must disclose (a) the identity of the funder; and (b) whether the funder has committed to adverse costs liability (Article 22)	<b>Disclosure required?</b> Yes, as soon as reasonably possible of any third-party funding agreements. (Article 48)	Third party funding is increasingly supporting parties in large scale arbitrations. The existence of such agreements is disclosable and may lead to increased adverse costs orders for unsuccessful parties.
	<b>Time limit to issue Award</b>	Within six months from the last signature of the Terms of Reference (Article 31)	Within 75 days from the date of the closing of proceedings (Article 33)	Within six months from the date of the transmission of the file to the Tribunal. (Article 35)	Within nine months from the date of the initial case management conference (Article 38)	Although all the arbitration rules set default time limits, in practice these are typically extended depending on the complexity of the case.
	<b>Estimated Arbitrator and Institution Fees</b>  (Assuming USD \$50m in dispute with 3 arbitrators. Fees based on calculators from the relevant institutions)	USD 612,967	USD 567,596	AED 1,772,790 (approx. USD 482,670)	AED 1,847,127 (approx. USD 502,900)	On a pure cost basis, there appear to be limited differences between the arbitral institutions.

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