

REVISION TO THE SCCA ARBITRATION RULES

The Saudi economy grew by 8.7% in 2022, which was the highest growth rate in the G20. In the same year, the construction industry in Saudi Arabia was valued at USD 133.1 billion, contributing 11.6% of the Kingdom's non-oil economy.

Despite this, the Saudi Centre for Commercial Arbitration ("**SCCA**") is still commonly overlooked in favour of 'traditional' arbitral institutions such as the ICC, LCIA and SIAC.

Nonetheless, the SCCA has been increasing its case load, and has been working hard to promote itself as a preferred institution for alternative dispute resolution regionally.

Saudi Arabia acceded to the New York Convention in 1994. In 2012, Saudi Arabia ratified its Arbitration Law, which is broadly modelled on the UNCITRAL model law. The SCCA was launched in 2016 and aims to provide alternate dispute resolution services in accordance with best international practice. It operates in both Arabic and English.

On 1 May 2023, the SCCA announced the publication of a revised set of SCCA Arbitration Rules ("**Rules**") (available [here](#)). The Rules will apply to all arbitrations commencing on or after this date. This article reviews the key changes to the Rules.

SCCA Court

The SCCA Court was formed in November 2022 and with the introduction of the revisions to the Rules, the SCCA Court, which replaces the SCCA Committee for Administrative Decisions, will undertake the administrative role of the SCCA. The SCCA court is composed of 15 individuals from 12 countries, who will be responsible for arbitrator appointments (including emergency arbitrators), review of awards, setting of fees, etc.

Choice of Law

Despite the removal of the caveat set out in the old SCCA rules that the Tribunal should apply the law chosen by the Parties "*without prejudice to the rules of Shari'ah*", Parties should bear in mind that Shari'ah will still apply as a matter of public policy to arbitral awards due to be enforced in the Kingdom.

Should Parties wish for Shari'ah to apply, the Rules' provide the following model clause:

"The law governing the [contract and/or arbitration agreement] shall be [___] to the extent that such law does not conflict with Shari'ah as outlined in the [e.g., Shari'ah Standards of the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)], in which case Shari'ah shall take precedence."

Powers of Arbitrators

The Rules give the Tribunal power to determine wide ranging procedural issues, including, amongst others:

- the most effective mode and format of hearings and communications, including remote hearings;
- shortening (or dispensing with) submissions;
- dispensing with oral testimony of witnesses; and
- conducting proceedings on documents only.

Efficiency

The Rules aim to resolve disputes efficiently. For example:

- emergency arbitrators are now required to issue interim awards no later than 15 days from the date on which the case file was transmitted to them (subject to the Administrator extending this period if deemed necessary or requested by the emergency arbitrator).

- disputes under multiple arbitration agreements can form part of a single Request for Arbitration if all the following requirements are met: (i) the relief sought arises out of the same transaction or a series of related transactions; (ii) a common question of law or fact arises under each arbitration agreement giving rise to the arbitration; and (iii) if applicable, the multiple arbitration agreements under which the claims are made are compatible.
- Tribunals can determine applications for disposal of disputes for reasons of jurisdiction, admissibility or legal merit without the need to follow every step that would otherwise be taken in the ordinary course of an arbitration.
- Tribunals are given the ability to encourage parties to settle (including through mediation) all or part(s) of their disputes.
- finally, in order to encourage efficient proceedings, Tribunals are allowed to allocate costs, draw adverse inferences and take additional steps to protect the efficiency and integrity of the arbitration.

Technology

The Rules place an increased emphasis on technology. For example:

- the Request for Arbitration can be sent electronically;
- Arbitrators can sign all awards electronically;
- notices can be served "*at the email address which the addressee represents as its authorised email address at the time of such communication*"; and
- all administrative conferences are to be held remotely by video conference, telephone or other appropriate means, unless the parties agree otherwise.

Third Party Funding

Reflecting the growing use of third-party funding in arbitration, the Rules require each party to disclose to the Administrator, all other parties, and the Tribunal, the identity of any non-party (including a third-party funder) who has an economic interest in the outcome of the arbitration.

Comment

The SCCA appears committed to becoming a regional (and in time international) leader in alternate dispute resolution. The Rules assist in its drive to achieve "Vision 2030". The detailed nature of the Rules, which embrace international best practice, are testament to this.

We understand that many parties who have SCCA arbitration 'baked into' their contracts are breathing a sigh of relief at the introduction of the Rules. We are confident that the Rules will greatly assist the growing reputation of the SCCA and the Kingdom.

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