

**MAY 1, 2023**

For more information,
contact:

Ben Williams

+971 4 377 9946

bwilliams@kslaw.com**Samaa Haridi**

+1 212 556 2248

sharidi@kslaw.com**Sarah Walker**

+44 20 7551 2132

SWalker@KSLAW.com**Guillaume Hess**

+971 4 377 9907

GHess@KSLAW.com

King & Spalding**Dubai**

Al Fattan Currency House

Tower 2, Level 24

DIFC | Dubai International

Financial Centre

P.O. Box 506547

Dubai, UAE

Tel: +971 4 377 9900

Riyadh

(in cooperation with The Law

Office of Mohammed

AlAmmar)

Kingdom Centre, 20th Floor

King Fahad Road,

PO Box 14702

Riyadh 11434

Saudi Arabia

Tel: +966 11 466 9400

SCCA Publishes New Arbitration Rules

The Saudi Center for Commercial Arbitration (“**SCCA**”) announced on 1 May 2023 the publication of its revised SCCA Arbitration Rules (the “**2023 Rules**”). This follows the SCCA’s announcement in November 2022 of i) the formation of the SCCA Court, which replaces the SCCA Committee for Administrative Decisions and ii) the establishment of an SCCA branch in the Dubai International Financial Centre (“**DIFC**”), meaning that parties may choose the SCCA Arbitration Rules in conjunction with a DIFC seat.

The announcement of the 2023 Rules follows a significant increase in case registration numbers at the SCCA in recent years. Further, the Saudi courts have generally been supportive of the enforcement of local and foreign arbitral awards in the Kingdom. According to the SCCA, in 2022, the Saudi Courts enforced 522 awards worth over 232 million US dollars. Of the 131 motions to annul awards, 92% were denied and only 3.8% were fully annulled based on violations of Shari’ah and public policy.

KEY CHANGES IN THE 2023 RULES

The 2023 Rules contain significant amendments to the SCCA 2018 Arbitration Rules, such that the 2023 Rules are, in the words of the SCCA in its press release, “*in conformity with the latest international standards in the arbitration industry and take into account the best practices followed by other eminent arbitral institutions.*”

As a general observation, the 2023 Rules no longer make reference to Shariah principles that apply under the laws of the Kingdom of Saudi Arabia and refers only to “*applicable laws*” (Article 27). However, it is important to note that Shariah principles will apply as a matter of law to arbitrations seated in the Saudi Arabia and as a matter a public policy where enforcement of awards is sought in the Kingdom.



The main key changes include the following:

1. Empowerment of the SCCA Court

- Articles 1 and 3 define and provide powers to the SCCA Court, a body that is independent of the SCCA. The SCCA Court, comprises fifteen well-known international arbitration practitioners from around the world and is headed by eminent international arbitrator Mr Jan Paulsson. The SCCA Court will determine administrative and technical matters related to arbitrations and mediations administered by the SCCA, including:
 - appointing emergency arbitrators (Article 7);
 - determining objections to multi-contract arbitrations and deciding on the consolidation of arbitrations (Articles 11 and 13);
 - appointing arbitrators (Article 17);
 - determining arbitrator challenges (Article 18);
 - determining disputes relating to the place of arbitration (Article 22), or the number of arbitrators (Article 15);
 - reviewing and approving awards (Article 36); and
 - determining the administrative fees of the arbitration and of the arbitral tribunal (Articles 40 and 41).

2. Efficiency of the Arbitration Process

- The 2023 Rules expand the arbitral tribunal's discretionary powers, primarily to ensure the efficiency of the dispute resolution process. These powers include the determination of effective formats for hearings (including remote hearings), encouraging parties to resort to mediation where appropriate (Article 25), and limiting the length of written submissions or requests (Article 27).
- Emergency arbitrators are now required to issue interim awards no later than 15 days from the date on which the file was transmitted to them. An extension may be granted subject to a reasoned request from the emergency arbitrator or on the initiative of the Administrator if it considers it necessary to do so (Article 7). The inclusion in the 2023 Rules of a speedy resolution of emergency measures will help to preserve the interests of parties which, in turn, will ensure the efficacy of the dispute resolution process.
- Parties may issue a single request for arbitration for claims arising out of more than one contract or arbitration agreement (Article 11). A multi-contract arbitration is subject to three cumulative conditions: 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 arbitration agreements are compatible. If a party objects, the arbitral tribunal has the power to decide whether a single arbitration may proceed, unless the Administrator refers the objection to the SCCA Court. The SCCA Court will determine the objection by having regard to the requirements of consolidation (Article 13). However, it remains unclear which of the requirements relative to consolidation should be considered. In particular, it is not clear whether the consent of the parties to the single arbitration is mandatory. This may require some clarifications from the SCCA. In the event, the SCCA Court's determination does not prevent the arbitral tribunal from making determinations on jurisdiction (Article 24).
- The SCCA Court may consolidate two or more arbitrations at the request of a party or the arbitral tribunal under one of three circumstances: i) parties agreed to consolidate; ii) the claims are made under the same arbitration agreement; or iii) if there are multiple arbitration agreements but the arbitrations relate to the "*same legal relationship*" and the arbitration agreements are compatible (Article 13). If the SCCA Court decides to consolidate two or more



arbitrations, the parties will be deemed to have waived their rights to nominate an arbitrator. Further, the SCCA Court may revoke the confirmation or appointment of any arbitrators, appoint additional arbitrators or select one of the previously appointed arbitrators to serve in the consolidated arbitration.

- Arbitral tribunals must issue their awards within 75 days from the date of closing of proceedings, which may be extended by a further 75 days if the Administrator finds it necessary (Article 33). This extends the 60 days provided under the SCCA Arbitration Rules of 2018.
 - To further promote efficiency, the 2023 Rules provide for the early disposition of issues of jurisdiction, admissibility, or legal merit in circumstances where i) an allegation of fact or law is manifestly without merit, ii) no award could be issued in a party's favour under the applicable law, or iii) "*any issue of fact or law material to the outcome of the case is, for any other reasons, suitable for determination by way of early disposition*" (Article 26). Arbitral tribunals are to decide such applications within 30 days from the date the application is permitted to proceed.
3. Reliance on Modern Technology
- The 2023 Rules also promote the use of modern technology in the context of filing documents and case management. Article 4(2) relative to notices provides that, in the absence of a party's designated email address, a notice shall be deemed to have been received if it has been delivered to the other party or its authorised representative "*at the email address which the addressee represents as its authorized email address at the time of such a communication.*" Further, the default position for the conduct of administrative conferences is for these to be "held remotely by videoconference, telephone, or any other appropriate means of remote communication" (Article 10). Arbitrators are also expressly permitted to sign awards electronically (Article 36).
4. Integrity of the Arbitration Proceedings
- The arbitral tribunal may condition its permission to amend or supplement claims on the provision of appropriate security by the requesting party (Article 8). Such an approach is likely to limit or prevent parties from advancing incomplete or piecemeal claims or engaging in dilatory tactics.
 - An arbitral tribunal may refuse proposed changes in party representation to "*safeguard the composition of the Arbitral Tribunal or the finality of the award,*" for example, where such changes might give rise to conflicts of interest (Article 9 (3)).
 - Arbitrators may now be challenged for three reasons: i) justifiable doubts as to impartiality and independence, ii) failure to perform duties, and iii) the arbitrator manifestly lacks the qualifications agreed by the parties (Article 18). The SCCA Arbitration Rules of 2018 only referred to the first ground for challenge. The two additional grounds for challenge aim to promote the integrity and the efficiency of the arbitration process.

SUMMARY

The publication of the 2023 Rules seeks to embody best international practices and standards with some cutting-edge and innovative approaches. As with any set of new rules it will take some time for them to bed-in and for trends in their practical application to fully emerge. Overall, the stated purpose of the 2023 Rules is to be user-friendly and practitioner focused. This can only be a positive for arbitration in the region.



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