
Kluwer Arbitration Blog

The First ICC Kuwait Arbitration Day

Dalal Al Houti · Friday, December 21st, 2018

On 6 November 2018, the [ICC](#), in collaboration with [Al Tamimi & Company](#), hosted the first [Kuwait Arbitration Day](#). This involved practitioners from across the Middle East and beyond coming together and discussing the latest developments and trends within arbitration. The event attracted over 100 participants who attended despite the day being announced as an impromptu [public holiday](#) due to heavy rain and road washouts. The first ICC Kuwait Arbitration Day was, however, no washout.

The day was divided into three sessions in which panellists from different backgrounds and experiences shared their expertise and knowledge through interactive debates. The first session addressed the advantages and disadvantages of arbitration. The second session shed light on recent developments in ICC arbitration and its impact on providing efficient and transparent proceedings. The third session specifically addressed the history and continued progress of arbitration in Kuwait.

Welcome Address and Keynote Speech

Dr Dania Fahs, Deputy Regional Director of the ICC, welcomed the distinguished guests and panellists on behalf of the ICC. Dr Fahs briefly addressed recent developments in the ICC rules and their positive outcome on arbitration procedures.

[Essam Al Tamimi](#), Senior Partner and Founder of [Al Tamimi & Company](#), delivered a keynote speech in which he emphasised the importance of raising awareness of arbitration in Kuwait and the region.

The Benefits of Arbitration and Model Arbitration Clauses

The first panel was moderated by [Dalal Al Houti](#) ([Al Tamimi & Company](#)) and composed of [David Hunt](#) ([Boies Schiller Flexner](#)), [Dr Nagla Nassar](#) ([Nassar Law](#)), [Thomas R. Snider](#) ([Al Tamimi & Company](#)), and [Aysha Abdulla Mutaywea](#) ([Mena Chambers](#)).

Mr Hunt discussed the advantages of using arbitration to resolve disputes and how to manage costs during proceedings and finally recommended certain disputes that should be referred to litigation

rather than arbitration.

Dr Nassar considered uncertainty in arbitration clauses and how to handle arbitration clauses in a group of contracts and concluded with tips on fixing competing jurisdiction clauses.

Lastly, Mr Snider emphasised the importance of the seat of arbitration, presented slides of faulty arbitration clauses, and concluded with tips on how to eliminate ambiguity in arbitration clauses.

ICC Dispute Resolution and the Latest Arbitration Developments

The second panel moderated by Dr Dania Fahs (ICC) included [Roland Ziadé](#) (Linklaters), [Michael Black QC](#) (XXIV Old Buildings), and [Victor Leginsky](#) (Arbitralis). Mr Ziadé considered the impact of the recent ICC Rules amendments on the effectiveness of the arbitration procedures. Mr Black shared his insight on the positive and negative effects of third party funding. Finally, Mr Leginsky deliberated on the developments in and emergence of regional arbitration seats like [DIFC](#), [ADGM](#), and the [QFC](#).

The ICC Rules

The revised [ICC Rules](#) took effect on 1 March 2017. Although only a few changes were made, they nevertheless have had a significant impact on the efficiency and transparency of the arbitration procedures. In line with other leading institutions, the ICC introduced key changes focused on a new expedited procedures for small claims.

Article 30 of the ICC Rules states that the expedited procedures provisions automatically apply to arbitration agreements concluded after the Rules came into force and where the amount in dispute does not exceed USD 2 million or where parties have agreed to use it.

However, parties can agree to opt out of the process and it may not apply where the Court determines that expedited procedures are not suitable.

The expedited procedure involves the [Court](#) appointing a sole arbitrator and the elimination of terms of reference. The case management conference must take place within 15 days from the date the file was transmitted to the tribunal. Additionally, the ICC Rules limit the number and length of written submissions and evidence and allow the tribunal six months to render the final award from the case management conference date.

Other changes to the Rules include reducing the time limit for the issuance of the terms of reference from two months to one month. The Rules also allow the Courts to inform the parties, upon their request, of the reasons for its decisions.

The above newly introduced revisions will help ensure that the arbitration procedures are concluded in a timely manner and are cost-efficient.

Since the implementation of the ICC Rules, the ICC has received 84 requests to opt into the expedited procedures. 25 cases have been administered by the ICC using the expedited procedures and were all concluded in accordance with the six-month time limit.

Other statistics presented by the ICC were:

- a. In 2017, 219 parties from Central and West Asian countries featured in ICC arbitrations, which marks a 26% increase since 2016.
- b. The top 50 countries participating (in terms of case number and number of parties represented) includes the United Arab Emirates, Saudi Arabia, and Qatar.
- c. Over the last 10 years, 61 parties originating from Kuwait participated in ICC proceedings. However, in 2017 only three parties originating from Kuwait were involved in ICC arbitrations.

Arbitration in Kuwait: Practice and Experiences

The third panel, moderated by Dalal Al Houti (Al Tamimi & Company), consisted of Dr Yousuf Sellili (Ooredoo), Bader Saoud Al Bader, (The Law Office of Bader Saud Al-Bader & Partners), Dr Nasser Al Zaid (Kuwait Arbitration Society), and Dr Anas Al Tourah, (Kuwait Commercial Arbitration Centre). The distinguished panellists shared their expertise and insights on Arbitration in Kuwait.

Dr Sellili discussed the legal framework of the Kuwait arbitration regime, while Mr Al Bader shared his experience of practicing arbitration in Kuwait, discussing the appointment of arbitrators and the challenging of arbitrators. Dr Al Zaid addressed the history of arbitration in Kuwait and Dr Anas elaborated on the progress and functions of the Kuwait Commercial Arbitration Centre (KCAC) and the future of arbitration in Kuwait.

The consensus among the panellists of this session was that the judiciary in Kuwait is arbitration-friendly but there needs to be a stand-alone arbitration law that conforms to international standards.

Arbitration Regime in Kuwait

Kuwait does not have a stand-alone arbitration law. Arbitration is governed by the Code of Civil and Commercial Procedure, Law No 38 of 1980 (“CCP”) (which addresses arbitration in chapter 12, articles 173 to 188) and the Judicial Arbitration in Civil and Commercial Matter Law, Law No 11 of 1995 as amended by Law No 12 of 2013 (“Judicial Arbitration Law”). Neither law is based on the [UNCITRAL Model Law](#).

Kuwait does however have a strong history of supporting international arbitration, being the first GCC state to participate in the [New York Convention](#) and the [ICSID Convention](#).

The Kuwait Commercial Arbitration Centre (KCAC)

The KCAC was established in 1999 with the objective of supporting arbitration for commercial dispute resolution by providing a flexible and efficient arbitration procedure. The Centre has played an active role in promoting and raising awareness of arbitration within Kuwait. It offers legal and technical assistance as well as courses to arbitrators in order familiarise themselves with the Kuwaiti laws and regulations.

The KCAC Rules provide that the [UNCITRAL Rules](#) shall apply in the absence of provisions relating to a specific matter in the KCAC Rules or the CCP.

Kuwaiti Courts

The Kuwaiti Courts are generally arbitration-friendly and apply the enforcement laws correctly when recognising and enforcing domestic and foreign arbitral awards. The issue is not with the application of the law but with the law itself.

Issuing a stand-alone Kuwaiti arbitration law will further strengthen Kuwait's position as an arbitration-friendly country and will allow it to compete with neighbouring jurisdictions, most of which have recently amended their laws to comply with international standards.

Closing Remarks

After insightful and thought-provoking sessions, the event ended with closing remarks from Essam Al Tamimi and [Jane Rahman](#) (Al Tamimi & Company) who encouraged the Kuwaiti arbitration community to continue with the positive progress within arbitration. Talks are underway to host the second ICC Kuwait Arbitration Day next year.

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