

# Kluwer Arbitration Blog

## The New Saudi Center for Commercial Arbitration Rules 2023: What's In Store?

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On 1 May 2023, the Saudi Center for Commercial Arbitration (“SCCA”) introduced its latest edition of the SCCA Rules, following an extensive public consultation process and input from the SCCA Rules Advisory Committee chaired by Richard Naimar and the SCCA’s General Counsel, Christian Alberti. This post provides an overview of the modernizations and innovations reflecting international best practices in the SCCA Rules 2023 (“**2023 Rules**”) since the first edition of the SCCA Rules in 2016.

### Role of the SCCA Court

Mirroring the approach of other leading arbitral institutions, the SCCA has established the SCCA Court. A body independent of the SCCA, the SCCA Court is empowered to make decisions on various administrative and procedural issues that arise during the course of the arbitration proceedings, which are binding on both parties and tribunals. These include decisions on the appointment of emergency arbitrators, challenges to arbitrators, appointment and re-appointment of arbitrators, consolidation requests and fixing the costs of arbitration. In addition, like other leading arbitral institutions, any award issued by tribunals in SCCA arbitrations, after 1 May 2023, must be scrutinized and approved by the SCCA Court.

Apart from the activities specifically delegated to the SCCA Court, the Administrator provides services through the SCCA case management office or any arbitration institution with which the SCCA has cooperation agreements.

### Expedited Procedure Rules for Lower Value Disputes

A notable feature of the 2023 Rules is the increase in the threshold amount in dispute for the Expedited Procedure Rules to apply, from SAR 200,000 to SAR 4 million (including claims, counterclaims, set-offs, and cross-claims). From users’ perspective, the increased threshold to SAR 4 million (approximately USD 1.07 million) is a positive amendment and will result in a higher number of relatively lower valued claims being dealt with expeditiously, saving time and cost. In comparison to other arbitral rules, the threshold amount of the 2023 Rules on expedited

proceedings sits in the middle between, for instance, on the one end an expedited arbitration under the 2022 Dubai International Arbitration Centre Rules (“**DIAC Rules**”) where the threshold is a relatively low amount of USD 272,000, and on the other end of the spectrum, an expedited arbitration under the 2021 International Chamber of Commerce Arbitration Rules (“**ICC Rules**”), where the threshold is currently USD 3 million. The Expedited Procedure Rules under the 2023 Rules can also apply by parties’ agreement.

Awards under the SCCA Expedited Procedure Rules are to be issued within 180 days from the date that the tribunal is constituted unless the Administrator decides, in exceptional circumstances, to extend the time limit for issuing the award. This period is in line with other leading arbitral rules such as the ICC Rules which similarly provides for the issuance of awards within six months from the date of the case management conference in an expedited arbitration, but longer than expedited proceedings of other arbitral rules, such as the DIAC Rules, under which awards must be issued within a relatively short timeline of just three months from the date the file is transmitted to the tribunal.

### **Innovative Online Dispute Resolution Protocol Rules**

First introduced in [October 2018](#), the 2023 Rules continues to include the Online Dispute Resolution (“**ODR**”) Protocol Rules which apply on parties’ written agreement to disputes where the aggregate value does not exceed SAR 200,000.

The arbitral process under the ODR Protocol Rules is further streamlined: on being notified of the Request for Arbitration, parties have 10 days to file their Answer to the Request for Arbitration and thereafter 10 days to file their Answer to the Counterclaim. All pleadings, notices and documents are to be submitted using the ODR Platform. After the appointment of the sole arbitrator, parties are not allowed to bring any new or different claim without the approval of the sole arbitrator.

Awards under the ODR Protocol Rules are to be issued based on parties’ written submissions, unless parties and the sole arbitrator agree for a hearing, which is to be held via videoconference or telephone.

A unique feature of the ODR Protocol Rules is the default provisions for the place and language of the arbitration; unless parties have agreed otherwise, the place of arbitration is deemed to be Riyadh and the language of arbitration is deemed to be Arabic under the ODR Protocol Rules.

### **Increased Reliance on Technology and Greener Arbitrations**

Adapting to the increased reliance on technology, and in line with greener arbitrations, the 2023 Rules introduces a number of changes encouraging parties and tribunals to rely on electronic means while conducting their arbitration. For instance:

- Article 25 encourages tribunals and parties to consider how technology could be used in establishing the procedures for their arbitration, and specifically how it could be used to reduce the environmental impact of the arbitration.

- Article 36 expressly provides that awards are to be signed by arbitrators electronically, unless parties or the applicable law require wet ink signatures.
- Article 27 explicitly contemplates parties filing written submissions exclusively by email or electronically.

The effort made in the 2023 Rules to promote sustainable and environmentally conscious arbitration is lauded, and in line with the principles of the Campaign for Greener Arbitration's [Green Protocol for Arbitral Institutions](#).

### **Duty of Tribunals to Balance Efficiency of Arbitration with Parties' Right to be Heard**

As a response to the growing criticisms of the high costs and time involved in international arbitration, and in line with rules of other leading arbitral institutions, such as [Articles 22.1 and 22.2](#) of the ICC Rules, [Articles 17.1 and 17.2](#) of the DIAC Rules and [Articles 14.1, 14.2 and 14.5](#) of the 2020 London Court of International Arbitration Rules ("LCIA Rules"), Article 27 of the 2023 Rules expressly spells out that tribunals are to "manage the exchange of information between parties with a view to maintaining efficiency and economy ... to avoid unnecessary delay and expense while at the same time assuring equal treatment and safeguarding each party's opportunity to present its claims and defenses."

In addition, and in a rather bold move, the 2023 Rules also provides that tribunals may limit any requests for document production and may direct testing or other means for parties to focus and limit their searches with respect to document production requests. While similar provisions to the former can only be found in the ICC Rules at item d(iii) of the [Case Management Techniques, contained within Appendix IV](#), the specific reference to focus and limit parties' searches in document production requests in the latter, is novel and a testament to the proactive approach of the 2023 Rules.

### **Joinder**

Joinder provisions have been revised in the 2023 Rules and are now in line with the approach adopted by other widely used arbitral institutions, such as that of [Article 7](#) of the ICC Rules, [Article 9](#) of the DIAC Rules, and [Article 22.1](#) of the LCIA Rules.

Article 12 of the 2023 Rules introduces revised thresholds and factors for tribunals to take into consideration, as part of the relevant circumstances of the case, when deciding joinder applications. These include:

- whether the tribunal has prima facie jurisdiction over the additional party;
- timing of the joinder request;
- possible conflicts of interests; and
- impact of the joinder on the arbitration.

## Consolidation

In line with leading arbitral rules, Article 13 of the 2023 Rules provides that the SCCA Court may consider requests to consolidate two or more arbitrations under a single arbitration in circumstances where: (i) parties have agreed; (ii) all the claims in the arbitrations are made under the same arbitration agreement(s); or (iii) the claims in the arbitrations are not made under the same arbitration agreement(s), but 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.

In deciding consolidation requests, the SCCA Court is to take into account all the relevant circumstances, which include:

- applicable law;
- extent to which the same arbitrators have been appointed in all the relevant proceedings;
- progress already made in the arbitrations;
- whether the arbitrations raise common issues of law and/or facts; and
- whether the consolidation of the arbitrations would serve the interests of justice and efficiency.

These factors are in line with leading arbitral rules, such as [Article 10](#) of the ICC Rules, [Article 22.7](#) of the LCIA Rules and [Article 8](#) of the DIAC Rules.

Where the SCCA Court decides to consolidate two or more arbitrations into one, each party in those arbitrations being consolidated would be considered to have waived their right to nominate arbitrators. The SCCA Court is empowered to complete the appointment of the tribunal in any consolidated arbitration, by either appointing additional arbitrators, revoking the confirmation or appointment of previously appointed arbitrators or selecting one of the previously appointed arbitrators to serve in the consolidated arbitration.

## List Method for the Appointment of Arbitrators

Known as the “list method”, Article 16(15) of the 2023 Rules now provides for the SCCA Court to appoint an arbitrator where parties have not agreed on an arbitrator, or on any other method of appointment, within 30 days from the commencement of the arbitration. This role was previously designated to the Administrator. The “list method” entails the following steps for the appointment of an arbitrator:

- Each party is to simultaneously receive an identical list of names by the Administrator. Parties are to attempt to agree on an arbitrator from this list and to inform the Administrator of any such agreement.
- If there is no agreement between parties, then within 14 days, each party is to (i) strike any names objected to; (ii) number the remaining names in order of preference; and (iii) return the list to the Administrator. Parties are not required to exchange the lists between themselves.
- The 14 day time period to return the list to the Administrator is crucial; a party is deemed to have accepted all the names in the list if it does not return the list within this time period.

Thereafter, the common names that have been approved by both parties, in accordance with the designated order of mutual preference, will be appointed by the SCCA Court to serve as arbitrator. The SCCA Court also has the discretion to appoint an arbitrator outside of parties’ submitted lists

if the appointment cannot be made from the submitted lists.

Similar provisions have been introduced in [Article 13](#) of the DIAC Rules, which provide for the DIAC to communicate a shortlist of three names to parties and for each party to add an additional three candidates to its own list, rank the names in order of preference and return the list to DIAC, without copying the other party. These innovative provisions have been introduced with the intention to streamline the process of constituting tribunals where there is no agreement between parties in order to allow arbitrations to progress expeditiously and swiftly.

### **Early Disposition of Claims or Defences**

A welcomed introduction to the 2023 Rules is the provision for parties to request tribunals to “dispose of issues of jurisdiction, admissibility, or legal merit” made in a claim or defence summarily at the outset of the proceedings. Article 26 of the 2023 Rules provides the relevant criteria for such requests:

- where an allegation of fact or law material to the outcome of the case is manifestly without merit;
- even if the facts advanced by the other party are assumed to be true, no award could be issued in that party’s favour under the applicable law; or
- 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.

Requests for early disposition are to be submitted expeditiously, within 30 days from the filing of the claim or defence. Any request for early disposition not granted would not affect the tribunal’s final decision on the very same questions of fact and law in its final award. To deter unmeritorious applications, Article 26(4) allows tribunals to order costs against unsuccessful parties where they are of the view that any such request was made frivolously.

### **Emergency Arbitration Procedure Rules**

The 2023 Rules continues to maintain the Emergency Arbitrator Procedure Rules in Appendix III. Notably, Article 7 of Appendix III provides that an award in an emergency arbitration is to be made within 14 days from when the file was transmitted to the Emergency Arbitrator. In addition, Article 7 of the 2023 Rules provides that a Request for Arbitration is to be filed within 10 days from the emergency application, failing which the emergency arbitration is to be terminated, unless the Emergency Arbitrator determines otherwise.

### **Cyber Security, Privacy and Data Protection**

In line with recent approaches to safeguard against cyber breaches and to protect the privacy of data, Article 46 of the 2023 Rules helpfully provides five factors to consider when determining the reasonableness of specific information security measures: (1) risk profile of the arbitration; (2) existing information security practices, infrastructure, and capabilities of parties, arbitrators, and the SCCA; (3) burden, costs, and relative resources; (4) proportionality relative to the size, value,

and risk profile of the dispute; and (5) efficiency of the arbitration. By providing specific factors to be taken into consideration, the 2023 Rules goes a step further than [Article 30.5](#) of the LCIA Rules in this respect, which, while also providing that parties and tribunals are to consider any specific information security measures to adopt for the protection of their personal data, does not indicate any specific factors to be taken into consideration.

## Representation by Foreign Lawyers

Coming on the heels of a recent Kingdom of Saudi Arabia (“KSA”) [Court of Appeal decision](#), which refused a request to annul an award on the basis that the party was represented by a foreign lawyer, Article 9(1) of the 2023 Rules introduces language to make it clear that parties may be represented not just by legal practitioners but also “any other authorized representatives, including foreign legal practitioners regardless of the jurisdiction in which they are based or licensed to practice”.

## Concluding Remarks

The 2023 Rules has surpassed expectations; it contains provisions that are innovative, perceptive and an apposite response to the growing criticisms that have been levied against international arbitrations, such as the high costs and the propensity for unmeritorious applications and challenges to delay timelines in proceedings. With the latest revision, the SCCA has ensured that it is well-equipped to resolve disputes fairly and efficiently, in tandem with KSA’s Vision 2030.

No doubt, the modern and revamped procedural framework introduced by the 2023 Rules will contribute to the growth of arbitration as a desired dispute resolution mechanism in KSA, and to the SCCA as a leading arbitration institution in the region and worldwide.

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