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Countdown to RIDW25: Arbitrating Construction Disputes under the SCCA Rules

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With giga-projects at the forefront of its construction industry, the eyes of international contractors and foreign investors alike are on the Kingdom of Saudi Arabia (“KSA”). But as with all construction projects of significant scale and complexity, disputes are unavoidable.

With the introduction of the new [arbitration rules](#) of the [Saudi Center for Commercial Arbitration](#) (“SCCA”), resolving construction disputes in the KSA by way of SCCA arbitration is set to become the norm. Indeed, the SCCA arbitration rules include several features that make arbitrating construction disputes in the KSA an increasingly popular choice.

The SCCA’s joinder provisions (Article 12) are one such feature that is particularly important in construction disputes. With projects of the scale being witnessed in the KSA, multi-party and multi-contract disputes are ubiquitous—with projects often being undertaken by contractor joint ventures and works often being divided into packages awarded to various subcontractors. And while (a) the relationship between joint venture participants; and (b) the relationship between the joint venture and its subcontractors will be governed by agreements separate to the main construction contract, when a dispute eventually arises, the nature of that dispute is likely to impact the contractual relationships between several project participants. Where that is the case, a mechanism for joining parties to a dispute that arises out of complex factual matrices involving parties beyond those to the construction contract becomes imperative—and the SCCA rules give parties just that: a clear mechanism for joinder.

Equally important is the SCCA’s provision for the early disposition of claims or defences (Article 26). This is especially so in the construction industry, where defences on the basis of compliance with notice requirements or compliance with pre-conditions to arbitration are commonplace. Giving disputing parties the right to request the tribunal to dispose of such issues at a preliminary stage of the proceedings is key in construction disputes given the frequency with which such defences are raised and their potential materiality to the outcome of the case.

Other features of the SCCA rules are also worth highlighting. Article 25(2) encourages parties to consider how technology can be used to reduce the environmental impact of the arbitration. With construction disputes being synonymous with voluminous documentary evidence, moving towards electronic submissions is important. Similarly, Article 25(7), which encourages parties to consider settlement through any form of amicable dispute resolution, is significant in that it can push parties to have recourse to, for example, dispute adjudication boards, which are becoming increasingly

prevalent in the KSA.



We look forward to attending the SCCA 25 Conference!

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