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Dispute Resolution
Compendium

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Introduction

In 2023, the international arbitration landscape in the Gulf region underwent significant changes. We have closely monitored these changes and are delighted to provide you a summary and recap of the most important developments in the United Arab Emirates, Qatar, and Saudi Arabia, namely:

- Amendments to the UAE Arbitration Law
- Key court decisions in the UAE
- The establishment of the new Abu Dhabi International Centre (arbitrateAD) and its recently published Rules
- The coming into force of the UAE's new Commercial Transactions Law
- The introduction of the DIAC Mediation Rules
- An important decision by the Civil and Commercial Court of the Qatar Financial Centre
- The new Saudi Arabia Civil Transactions Law
- The new SCCA Arbitration Rules

Overall, these developments have been positive, with the most significant being amendments to the UAE Arbitration Law, the UAE's new Commercial Transactions Law, and Saudi Arabia's landmark Civil Transactions Law. These developments clearly illustrate a strong commitment to establish best-in-class arbitration practices, create a business-friendly legal environment, and embrace innovation.

It is anticipated that the dispute resolution landscape in the Gulf region will experience further development in 2024. In particular, the Dubai government will be considering proposals to extend the application of English common law beyond the DIFC, while Saudi Arabia will be developing the "Commercial Transactions Law" as it continues its efforts to codify its laws.

The United Arab Emirates



Amendments to the UAE Arbitration Law

In September 2023, the UAE issued Federal Decree No. 15 of 2023 (the “**Amendment Law**”) amending certain provisions of the Federal Law No. 6 of 2018 on Arbitration (“**UAE Arbitration Law**”). Following the coming into force of the new DIAC Rules last year, the Amendment Law introduces some significant changes to the arbitration regime in the UAE, aiming to enhance its efficiency, flexibility, and attractiveness.

We outline below some of the key changes introduced by the Amendment Law.

UAE Arbitration Law – Key Changes

Requirements for arbitrators

Members of the executive management and the controlling or supervisory body of an arbitration institution are prohibited from accepting appointments in arbitrations administered by that institution. This provision can be displaced if a number of conditions are satisfied, except where the prospective arbitrator would be acting as sole arbitrator or chair of the tribunal.

The Amendment Law expressly provides that arbitrators are prohibited from having a direct relationship with any of the parties in an arbitration which could prejudice their impartiality and independence.

Violation of the above-mentioned conditions can put the award at risk of annulment and entitle parties in the arbitration to damages from both the arbitral institution and the offending arbitrator.

Documents-only Arbitrations

The Amendment Law introduces the concept of “documents-only” arbitrations, granting tribunals the power to decide whether to hold oral hearings to hear evidence and oral arguments, or whether to proceed to decide an arbitration on a documents-only basis.

Confidentiality

The “entirety” of the arbitration proceedings shall be confidential, unless otherwise agreed by the parties. Previously, the confidentiality requirements applied only to hearings and arbitral awards.

Virtual Proceedings

Parties may elect for arbitration proceedings to be held virtually (previously, parties could elect to conduct proceedings by “modern electronic means”). The Amendment Law also imposes a requirement on arbitral institutions to ensure the availability of the technology and infrastructure necessary to support the realization of the parties’ choice of virtual hearings.

Key Court Decisions from 2023

In 2023, the arbitration landscape in the UAE saw a number of significant decisions, covering issues ranging from the jurisdictional authority of onshore courts to the validity of arbitration clauses. Below, we examine some of the key decisions, shedding light on their implications for arbitrating disputes in the UAE.

Dubai Court of Cassation Decision No. 828 of 2023 – Arbitration Agreements and Subsequent Contracts

The Court established the principle that where parties consent to arbitration, unless they subsequently agree an alternative dispute resolution mechanism, the arbitration agreement will extend to subsequent agreements, provided there is a sufficiently close factual connection between the initial and subsequent contracts.

The dispute arose out of a contract between an employer and a contractor to carry out works on several villas on the Palm Jumeirah, Dubai; the contract contained an arbitration clause. However, the dispute between the parties arose pursuant to purchase orders issued subsequent to the initial contract. The contractor contended that, as the purchase orders did not contain an arbitration clause, disputes arising in connection with them must be determined by the courts.

The Court rejected the contractor's argument and held that the arbitration clause in the first contract also applied to the subsequent purchase orders. The Court came to this conclusion on the basis that (1) the purchase orders were between the same parties; (2) there was a sufficiently close factual connection between the original contract and the subsequent purchase orders as they related to the same project; (3) the subsequent contracts were subordinate to the original contract; and (4) the purchase orders did not contain an alternative form of dispute resolution.

The Court's decision effectively creates a rebuttable presumption that favours arbitration across all aspects of commercial dealings related to a specific project as long as certain conditions are satisfied.

Abu Dhabi Court of Cassation Decision No. 1045 of 2022 – Abu Dhabi Courts' Jurisdiction Over ICC Rules-governed Arbitrations

On 18 January 2023, the Abu Dhabi Court of Cassation held that Abu Dhabi courts lacked supervisory jurisdiction over an arbitration conducted under the ICC Rules, even though the arbitration agreement between the parties designated Abu Dhabi as the seat.

The case concerned a dispute under a construction contract. The appellant initiated proceedings in the onshore Abu Dhabi courts, seeking annulment of the arbitral award on various grounds. The Abu Dhabi Court of Appeal dismissed the challenge holding that it lacked jurisdiction to hear the claim since the ICC branch office that administered the arbitration was located within the ADGM. The Court reasoned that as the ICC Office was an "establishment" under the ADGM Founding Law (Abu Dhabi Law No. 12 of 2020), this established the ADGM Courts' jurisdiction.

The appellant appealed the decision to the Abu Dhabi Court of Cassation contending that the arbitration clause provided for Abu Dhabi to be the seat of arbitration, and that the selection of the ICC rules in itself did not amount to an agreement that the ICC should be the seat.

The Court of Cassation agreed with the Court of Appeal and dismissed the appeal. In its decision, it further noted that the arbitration clause providing for the arbitration to be seated in "Abu Dhabi" was not specific as both the onshore courts and the ADGM Courts are courts of the "Emirate of Abu Dhabi". Therefore, the Court could not say that the default position should be that the seat of arbitration is onshore Abu Dhabi.

The case clearly underscores the potential risk that parties engaged in ICC arbitrations seated in onshore Abu Dhabi may find themselves litigating in the ADGM Court. It must be noted that whilst judgments of the Abu Dhabi Court of Cassation are not binding, the case establishes an interpretative trend following a similar decision in Abu Dhabi Court of Cassation, Petition No. 635 of 2022 (Commercial). When drafting arbitration agreements, parties are therefore encouraged to state expressly which arbitration law and supervisory courts are intended to apply.

Muhallam v Muhaf [ARB 021/2022] - DIFC Courts' Power to Recognize Foreign Interim Awards

On 19 September 2023, the DIFC Court of First Instance clarified that interim awards rendered outside the UAE could be recognized in the DIFC.

The claimant had made a request for recognition of an interim award pursuant to Articles 42 and 43 of Arbitration Law of 2008, DIFC Law No.1/2008 (the "DIFC Arbitration Law"), which provide for the recognition and enforceability of "arbitral awards" within the DIFC. The respondent opposed the claimant's application on the basis that interim measures were not enforceable as they did not constitute an "arbitral award" for the purposes of Articles 42 and 43 of the DIFC Arbitration Law.

Upon examining practices of international courts and academic opinions, the DIFC Court determined that neither the New York Convention nor the UNCITRAL Model Law (on which the DIFC Arbitration Law is modelled) preclude the Court from determining that interim measures qualify as "awards" in the context of enforcement proceedings.

The Court decided that regardless of the seat, awards on interim measures rendered by arbitration tribunals were enforceable by the DIFC Courts as long as the interim measure qualified as an "arbitral award".

The decision is significant for clarifying the enforceability of interim awards in the DIFC and confirms the DIFC Courts' pro-enforcement stance.

Dubai Court of Cassation Decision No. 1514 of 2022 - Jurisdiction, Admissibility and Other Procedural Issues

On 8 June 2023, the Dubai Court of Cassation issued a decision clarifying that the issue of a party's compliance with conditions precedent to arbitration is a matter of admissibility, not jurisdiction.

The underlying dispute arose from a failure by the respondent, the Employer, to process interim payments due to the claimant, the Contractor. Following the rendering of an award in favour of the claimant, the respondent raised a number of grounds for annulment, the key ground being that the claimant had not complied with a condition precedent to arbitration, namely the referral of the dispute to the Engineer.

The matter came before the Dubai Court of Cassation following an appeal by the respondent against a decision by the Dubai Court of Appeal.

The Dubai Court of Cassation concluded that the Court of Appeal was right in dismissing the application for annulment of the award, but erred in law in its consideration that the respondent's arguments on the non-fulfilment of preconditions to arbitration pertained to the tribunal's jurisdiction. It instead held that issues pertaining to "preconditions to arbitration" were questions of admissibility, not jurisdiction.

The Court went on to clarify the consequences of a matter being one of admissibility. It considered that failure to comply with preconditions to arbitration does not deprive an arbitral tribunal of the power to hear the dispute – it can only delay the hearing of the dispute until such time as those preconditions are met.

It further noted that in exercising discretion to decide whether a matter is admissible or not, an arbitral tribunal is not subject to the supervision of the courts at the seat, except to the extent necessary to ensure due process and public policy considerations have been met.

The Court's decision also dealt with two further procedural issues. *(Continued on the next page)*

The Consequences of a Party's Failure to Pay Advance on Costs

Departing from previous rulings of the Dubai Court of Cassation, the Court clarified that parties' failure to make payment of advance on costs to an arbitration centre would not amount to a waiver of the obligation to arbitrate and would therefore not invalidate the arbitration agreement. As such, non-payment of advance on costs does not constitute ground for nullification under the 2018 UAE Federal Arbitration Law.

The Tribunal's Power to Award Costs

The Court also confirmed that the tribunal's power to award legal costs remains strictly subject to party agreement. However, we note that some arbitration rules (e.g. 2022 DIAC Rules) expressly confer upon the tribunal the power to award party costs.



United States District Court of Eastern District of Louisiana No. 2:23-cv 1396 – Enforceability of DIFC-LCIA Arbitration Clauses

On 6 November 2023, a Federal Court in the United States rejected a motion by US contractor Dynamic Industries to compel a Saudi subsidiary of Baker Hughes to arbitrate their dispute over payments under an oil services contract under the auspices of DIAC.

The contract contained an arbitration clause referring disputes to mediation and arbitration under DIFC-LCIA rules, with the DIFC as the seat. However, the DIFC-LCIA Arbitration Centre had previously been abolished and, pursuant to an agreement between the LCIA and DIAC, it had been decided that all future DIFC-LCIA cases would be administered by DIAC starting from March 2022.

Dynamic Industries had asked the Court to dismiss the claim based on the doctrine of *forum non conveniens* on the basis that the parties had specified Dubai as the forum for their disputes. Alternatively, it contended, the court should compel arbitration in Dubai as there was a binding agreement for DIAC arbitration. It argued that the arbitration agreement remained valid as the Dubai Decree No. 34 of 2021 had “*transferred the assets, rights and obligations*” of the DIFC-LCIA to DIAC and had expressly stated that existing DIFC-LCIA clauses would be deemed valid.

The Court rejected Dynamic Industries’ challenge on both grounds holding that “*Whatever the similarity the DIAC may have with the DIFC-LCIA, it is not the same forum in which the parties agreed to arbitrate.*” It further noted that neither the US court nor the Dubai government had the power to “*rewrite*” the arbitration agreement and order the proceeding to take place in another forum without the parties’ consent.

This was the first time a foreign court tackled the issues and ruled on what might happen to an arbitration agreement where the agreed arbitration centre had been abolished. The decision highlights the risks and legal uncertainty that arise within the context of the abolishment of an arbitral institution.

The Abu Dhabi International Centre (arbitrateAD) Comes Into Existence

On 19 December 2023, the Abu Dhabi Chamber of Commerce and Industry launched the Abu Dhabi International Arbitration Centre (arbitrateAD), an international arbitration centre based in Abu Dhabi. This represents the UAE's second overhaul of an arbitration center in a number of years following the abolishment of DIFC-LCIA and the EMAC arbitration centres in 2021 and their replacement with DIAC.

From 1 February 2024, the governance structure and arbitration rules of arbitrateAD replaced those of the Abu Dhabi Commercial Conciliation and Arbitration Centre ("**ADCCAC**"). We set out below some of key provisions of the arbitrateAD 2024 Rules (the "**Rules**").

ArbitrateAD Arbitration Rules – Key Provisions

"Competence-competence" and separability of the arbitration agreement

The tribunal has the power to rule on its own jurisdiction and the arbitration agreement is deemed to be a contract separate from the main contract, meaning the validity of the main contract will not impact the validity of the arbitration agreement.

Seat

Where the parties have not expressly agreed on a seat, but have agreed on the place of the arbitration, the place of arbitration will be the seat. But if parties have failed to expressly agree on both the seat and the place of arbitration, the default seat will be ADGM, "*unless the Court, after giving parties a reasonable opportunity to be heard, decides otherwise, considering all the relevant circumstances.*"

Consolidation

Either party may request the Court to consolidate two or more arbitrations into a single arbitration if (1) all parties agree to consolidation; (2) all claims arising out of the arbitration are made under the same arbitration agreement; or (3) where all claims are made under more than one arbitration agreement, the relief sought by the parties arises out of the same transactions or series of transactions and the arbitration agreements are compatible.

Joinder

At the request of one of the parties, the Court has discretion to join in one or more parties to the arbitration if (1) both the existing and the prospective additional parties agree; and (2) the Court is content that the additional party is *prima facie* subject to the arbitrateAD's jurisdiction.

Expedited proceedings

Save as expressly agreed by the parties, expedited proceedings which allow the parties to determine cases early can be applied for, provided that the aggregate of all the claims and counterclaims does not exceed AED 9,000,000.

Third-party funding

Each party is under an obligation to notify the Case Management Office, the Tribunal and the other parties and identify any non-party who has entered into an agreement to fund any claims or defences.

Where parties agreed to submit their disputes to arbitration under the now superseded ADCCAC rules, the Rules will apply to all arbitrations commenced on or after 1 February 2024. This is subject to the exception that the new provisions relating to the appointment of an emergency arbitrator and expedited proceedings will not apply to such arbitrations, unless parties expressly agree otherwise. However, 2013 ADCCAC Arbitration Rules will continue to apply to any pending arbitrations being administered under those rules.

Parties should be alert to the risk that foreign courts may not recognize and enforce arbitral awards made pursuant to ADCCAC clauses. A precedent for this is provided by the decision of the Federal District Court for the Eastern District of Louisiana refusing recognition of an award under the DIAC rules where the arbitration agreement referred to the then defunct DIFC-LCIA rules (see section titled “Key Court Decisions from 2023” on page 6 of this Compendium). Whilst other courts have taken different approaches on this issue, parties should nonetheless consider updating their existing arbitration agreements as to refer to the Rules.



The New Commercial Transactions Law: Changes to the Period of Limitation

On 2 January 2023, the new Commercial Transactions Law (Federal Decree Law No. 50 of 2022) (the “**CTL**”) came into effect, replacing the Federal Decree Law No. 18 of 1993 (the “**Old CTL**”), which had governed commercial transactions for nearly thirty years. Whilst many provisions of the Old CTL remain unchanged, the CTL introduces a number of important changes.

Below we provide an overview of the modifications to the period of limitation for initiating civil actions introduced by the CTL.

Limitation Periods

Significantly, the CTL reduces the limitation period for commencing an action **from ten to five years** from the date on which the cause of action arises.

The CTL thus further widens the gap with Article 473 of the Civil Code which provides for a 15-year limitation period for civil contractual claims. However, the CTL takes precedence over the Civil Code insofar as commercial transactions are concerned.

Implications for Existing Contracts

The CTL applies to all contracts, including contracts formed prior to its coming into force on 2 January 2023 (the “**CTL Effective Date**”). This means that the limitation period for causes of action which arise under such contracts *after* 2 January 2023 is five years.

However, the situation is different where the cause of action arose *before* 2 January 2023. The CTL envisages three potential scenarios.

Scenario 1 - The application of the CTL would otherwise result in the expiry of a party's right to commence action before the CTL Effective Date

In such cases, the Old CTL ten year-limitation period would apply. By way of example, if the cause of action arose in 2014, whilst under the Old CTL a party would have the right to institute action until 2024 (i.e., within ten years), if a five-year period was applied, such right would lapse by 2019, and therefore prior to the CTL Effective Date. In this case, the CTL provides that the Old CTL limitation period applies. This ensures that the retrospective effect of this legislation does not extinguish a right that otherwise existed as at the date the CTL came into effect.

Scenario 2 – On the CTL Effective Date, a party can initiate an action for a period longer than five years

In such cases, the CTL five-year limitation period will apply to shorten the period. For instance, if on 2 January 2023 a party has the right to bring an action within 7 years, this right will be reduced to five years.

Scenario 3 – On the CTL Effective Date, a party can initiate an action within a period shorter than five years

In this case, the Old CTL limitation period will apply. For example, if on 2 January 2023, a party has the right to commence an action within the next three years under the Old CTL, the period of three years will continue to apply.

Given the effect of these changes which potentially shorten the period in which a claim is “time-barred”, parties ought to examine when their cause of action arose in respect of existing contracts where a dispute has arisen but formal proceedings have not been instituted.

DIAC Mediation Decision Come into Force

On 1 October 2023, the DIAC Mediation Rules 2023 (the “**Rules**”) came into effect. The Rules will apply to all mediations registered with DIAC after 1 October 2023, irrespective of when the agreement to mediate was entered into.

The Rules aim to introduce procedures for effective and amicable dispute resolution to be conducted “*at a fraction of the cost of an adjudicative process such as litigation or arbitration*”. The Rules represent yet another step towards establishing DIAC as a leading international arbitration and settlement center in the region.

Below we set out some of the key features of the Rules.

Key Features

Commencement of Mediation

The Rules grant a responding party only 15 days (subject to an extension of 7 days in certain circumstances) to respond to a mediation request. Failure to do so will be deemed as non-consent to the dispute being referred to mediation. In such a case, the mediation will not proceed, reflecting the consensual nature of mediation embedded in the Rules. Similarly, the Rules allow any party to withdraw from the mediation, which will result in the mediation being terminated.

Appointment and Duties of Mediators

Parties may nominate mediators and agree on the procedures and methods of nomination and relevant time limits. However, all mediators are ultimately appointed by the Arbitration Court of the DIAC, with due consideration to relevant circumstances, including the nature of the dispute, the nationality, location, qualifications and experience of the mediator.

Mediators have a duty to remain impartial and independent from the parties and to disclose any real or potential conflict of interest.

Conduct of mediation

Mediators have broad powers to determine the procedures for mediation, which is only subject to the requirement that each party must be given a reasonable opportunity to present their respective positions. The mediation procedures may include meeting or communicating with the parties jointly or separately.

Confidentiality

The Rules provide for strict confidentiality requirements, which are a crucial to parties’ confidence in the mediation process. The mediators and the parties must (1) keep all information related to mediation confidential; and (2) must not use any statement made in the course of the mediation process in any judicial or arbitration proceedings as evidence of admissions against the interest of the party that made them.

Settlement

The objective of the mediation process is the settling of all (or part of) the matters in dispute on mutually agreed terms. This may be embodied in a settlement agreement which the mediator can facilitate preparing.

Qatar



The QFC Court Issues Decision On Its Own Jurisdiction

Over the last two decades, Qatar has significantly expanded, establishing itself as a key player in the region. Throughout 2023, the international dispute resolution framework in Qatar did not experience substantial legislative changes, maintaining its stability following the enactment of the Qatar Financial Centre Arbitration Regulations in 2005 and the new Qatar Arbitration Law in 2017.

However, one noteworthy judicial development was the QFC Court's decision on its jurisdiction in the case of A v B [2023] QFC (F) 16 (anonymized for reasons of confidentiality). Below, we report on the decision and comment on its implications for parties doing business in the region.

A v B [2023] QFC (F) 16 – Jurisdiction Over Arbitration Proceedings

On 1 May 2023, the Civil and Commercial Court of the Qatar Financial Centre (the “QFC Court”) issued a decision regarding its own jurisdiction. Whilst the Court issued a 2-page “Note on Decision,” and did not release a full judgment to the public, it clarified in what circumstances the Court could exercise jurisdiction to supervise arbitrations where the Qatar Arbitration Law applies to the contract in question.

Background

The contract involved a dispute between two companies, A and B, neither of which was established in the QFC or Qatar. The Court's decision states that the Qatar Arbitration Law (Law No. 2 of 2017 issuing the Law of Arbitration in Civil and Commercial Matters) applied to the contract between the parties, which allows us to infer that the contract contained an arbitration agreement, presumably designating Qatar as the seat.

The Dispute

Under the Qatar Arbitration Law, the procedure to appoint an arbitrator allows for the parties to seek the assistance of the “Competent Court” as defined by the

Arbitration Law. In this case, the applicant had requested the assistance of the QFC Court to appoint an arbitrator. The dispute revolved around the question of whether the QFC Court could be the “Competent Court” as defined in the Arbitration Law if the Parties did not expressly agree that the QFC Court was the Competent Court in their arbitration clause (or expressly designate QFC as the seat, which would allow the Court to conclude that the parties intended that the QFC Court serve as the supervisory court at the seat of arbitration).

The applicant argued that based on a textual analysis of Article 1 of the Arbitration Law (reproduced below), which defines “Competent Court” as either the Qatar Court of Appeals or the QFC Court, parties are allowed to choose either of the two courts regardless of any express designation.

*“The Civil and Commercial Disputes Division of the Court of Appeals, or the First Instance Chamber Circuit of the Civil and Commercial Court of the Qatar Financial Centre, **based on the agreement of the parties**” (emphasis added)*

The inconsistency was due to the fact that the first comma in Article 1 above is found only in the English translation. The applicant contended that according to the official Arabic version of the text, the wording “*based on the agreement of the parties*” applied to both courts, meaning that it would be open to the parties to apply to either the Court of Appeals or the QFC Court.

The QFC Court's Decision

The QFC Court rejected the applicant's position and declined jurisdiction. In interpreting Article 1 of the Arbitration law, it reasoned that the wording "based on the agreement of the parties" applies only to an agreement of the parties to select the QFC Court as the Competent Court. Because there was no such express agreement, the default court was the State of Qatar Court of Appeals – in other words, only express agreement between the parties designating QFC as the Competent Court could displace this default position under the Arbitration Law. The QFC Court arrived at this conclusion by noting that, as a general matter, Qatar courts are the default courts in Qatar and that the applicant's interpretation was inconsistent with other provisions of the Qatar Arbitration Law.

Implications

The QFC Court's decision represents a welcome clarification of the extent of its jurisdiction. Parties operating in the region should be mindful of the need to specify in their arbitration agreements the "Competent Court" empowered with overseeing the arbitration proceedings. If the parties intend to designate the QFC (instead of Qatar) as the seat, and intend to designate the QFC Court (instead of the State of Qatar Court of Appeal) as the supervisory (or competent) court for the purposes of the arbitration, the parties should state this expressly in their arbitration clause.





Saudi Arabia



The New Civil Transactions Law

The Kingdom of Saudi Arabia's first Civil Transactions Law (the "**KSA Civil Code**" or the "**Code**")¹ came into force on 16 December 2023.

The new Code contains 721 articles, covering matters including (i) contract formation, execution and termination; (ii) tort claims; and (iii) specific contracts such as those for sale, leases, agency and construction contracts (known as "Muqawala" contracts).

It is expected that these new provisions will provide more certainty on the rights and obligations of contracting parties in the Kingdom of Saudi Arabia, whose civil transactions have until now been governed by Islamic Shari'ah. Commenting on the KSA Civil Code, HH Crown Prince of the Kingdom of Saudi Arabia Mohammed bin Salman said the Code will "*enhance transparency and increase the ability to predict judgements in the field of civil transactions reducing discrepancies in judicial reasoning to reach prompt justice*".

It is important to note that Shari'ah law has not been displaced. Article 1 of the Code provides that if there is no applicable text in the Code, the general rules (or maxims) set out under Article 720 are to apply. These rules – 41 in total – codify Shari'ah law principles. Article 1 further provides that if there is no applicable maxim, then "*the provisions derived from the Islamic Shari'ah most appropriate to this law shall be applied*."²

In this section, we provide an overview of this landmark piece of legislation, with reference to the key points that will be relevant to contracts which are governed by Saudi law.

A Retrospective Effect

The KSA Civil Code has retrospective effect, meaning it applies to events that occurred and contracts that were signed before 16 December 2023, except where:

(i) a contracting party can prove that such application would contradict an existing "statutory provision" or "*judicial principle*"³; or

(ii) the limitation period in respect of a given right had begun to run prior to 16 December 2023.

Formation of Contracts

As per Article 31 of the Code, a contract is made by offer and acceptance.

Article 37 of the Code makes it clear that silence cannot be deemed acceptance unless "*there is an agreement to that effect, or there is other evidence indicating acceptance*"⁴ or if it is related to a previous transaction between the parties. Regarding the latter, another provision to note is Rule 13 under Article 720. It provides that silence will be considered to be a statement, if there is need for a statement. This is unlikely to apply to the formation of a contract, but it could be relevant to variations or amendments to existing agreements.

The incorporation of terms from other documents (e.g., standard form contract terms in construction contracts) is permitted by Article 46, which states: "*if the contracting parties expressly or implicitly refer in the contract to the provisions of a model document, specific rules, or any other document, it is considered to be part of the contract*".⁵

Good Faith

The KSA Civil Code has codified the Shari'ah requirement for contracting parties to act in good faith.

Article 95 provides that "*the contract shall be executed in accordance with its terms and in a manner consistent with the requirements of good faith*".⁶

Interestingly, Article 41 of the KSA Civil Code extends the obligation of good faith to the negotiation phase of a contract, making it incumbent on parties to conduct contract negotiations in good faith. A party found to be acting in bad faith during negotiations may be liable to pay damages. Article 41 of the Code also indicates that the law will consider a party to be acting in bad faith if they knowingly withhold key information or if a party negotiated without a genuine intent of reaching an agreement. This means that, during the negotiation stage, parties should be transparent about relevant facts and circumstances.

The application of the good faith principle to parties' conduct during the life of the contract will also extend to a party's exercise of a contractual discretion or right which might otherwise appear to be absolute. The Code provides a list of circumstances which will amount to an abuse of right, including: (1) exercising a contractual right solely to cause harm; (2) where the benefit of exercising a contractual right is absolutely disproportionate to the harm suffered by others; and (3) exercising a contractual right for an unlawful purpose.

Article 720, Rule 40 provides that "*no person may resile from what he has (conclusively) performed.*"⁷ This may have an analogous effect as the doctrine of estoppel in certain circumstances, as it prevents a person from taking an action contrary to his previous actions.

Unjust Contracts

Article 68 of the Code deals with "*unjust contracts*" and provides the court with the discretion to reduce or increase the extent of the obligations under the contract, or even invalidate the contract if one of the contracting parties takes advantage (or, in other words "*exploits an apparent weakness*"⁸) of the other.

Any action on the basis of Article 68 of the Code must be instituted within 180 days from the date of the contract, otherwise it will be dismissed.

This is likely to be helpful in cases where there is differing commercial strength between the parties and the resulting contract could be unjust.

Interpretation of Contracts

The KSA Civil Code follows the objective doctrine of contract interpretation whereby a contract is only susceptible to judicial interpretation if the wording is not clear.

Article 104 sets out the rules for the interpretation of a contract and is similar to Civil Codes in other GCC jurisdictions. Article 104 provides:

- If the words of the contract are clear, its meaning is not to be changed and the words will be used to interpret the will of the contracting parties.
- If the words of the contract are unclear and there is a need to interpret the contract, then the court/arbitrator must have regard to the common will of the contracting parties and take into account the

customary practice, the circumstances of the contract, the nature of the transaction and the dealings between the parties to determine the intentions of the parties.

- If there is any doubt about the interpretation of a contractual provision, that doubt is to be interpreted in the interests of the party who bears the burden of an obligation. This reflects the basic burden of proof principle.
- It is not permissible to rely on any terms of a contract in isolation, rather the terms are to be interpreted in light of one another by giving each term a meaning that does not conflict with the other terms. Moreover, a contract clause must be interpreted in the context of the entire agreement.

Termination of Contracts

Article 94 of the Code provides that "*if the contract is valid, it may not be revoked or amended except by agreement or by virtue of a statutory provision.*"⁹

Article 107 deals with rescission for non-performance and provides that where one of the parties has failed to fulfil an obligation, the other party can ask the court/arbitrator to order that the contract is either performed or rescinded.

Under Article 108, in the event that one of the parties does not perform an obligation, the parties can agree that the contract is to be rescinded without the need for a court ruling. Notice is required unless the parties expressly agree otherwise.

Article 111(1) provides that where the contract is rescinded, the parties are to be returned to the condition in which they were before the contract and if that is not possible the court/arbitrator may award compensation. Article 111(1) of the Code is unlikely to be applicable in instances where a contract has been partially performed as it will not be possible to restore the parties to their pre-contract positions. Instead, it is likely that there will be an award of compensation.

Under the Code (specifically Article 476) each party to a Muqawala contract has the right to request termination of the contract if performance has become impossible due to factors outside of the parties' control. If this occurs, the party asking for termination is obliged to compensate the other party for any resulting damage.

Tort Claims

Article 120 of the KSA Civil Code provides that *“any fault that causes damage to others shall be compensated by the person who committed it.”*¹⁰ This sets out the basic rule for tort claims under the Code, namely that all damages, specifically acts causing harm, must be compensated.

Article 125 of the Code limits the scope of this rule and provides that a person will not be liable for the damage caused if the damage arose from a cause beyond his control *“such as force majeure, the fault of a third party or the fault of the injured party, unless otherwise agreed.”*¹¹

If more than one person is responsible for an act which causes harm, then under Article 127 of the Code, all those responsible will be jointly liable to pay compensation for the damage and the court/arbitrator shall determine the share of the damage each individual is liable for. If it is not possible for the court/arbitrator to determine to what extent each person is liable for the harm caused, liability will be shared equally.

It is worth noting the KSA Civil Code also codifies the concept of contributory negligence at Article 128 which provides that *“if the injured party participates in or increases the damage by his fault, his right or some of his right to compensation shall be forfeited in proportion to his contribution.”*¹²

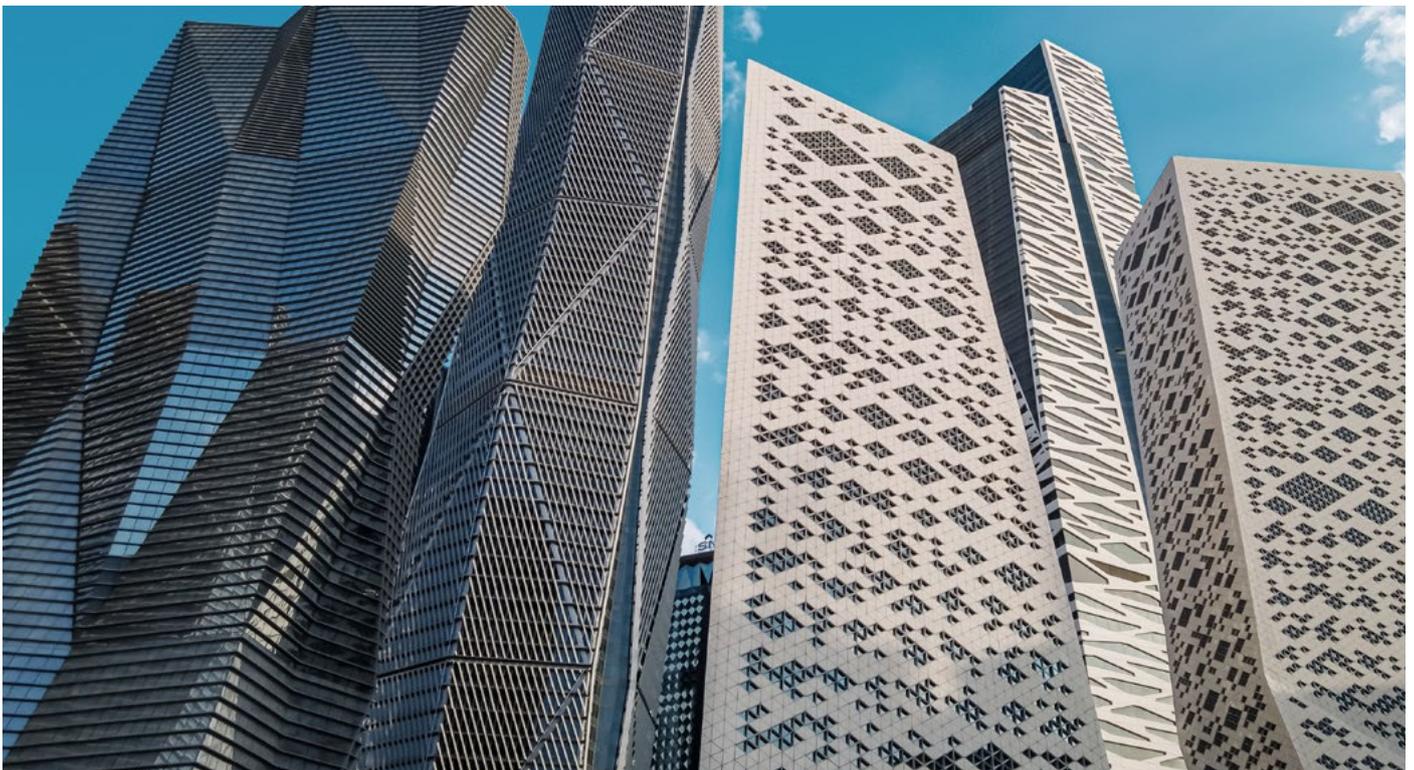
Damages

As is dealt with at Articles 161 and 164 of the Code, the primary remedy under the KSA Civil Code for non-performance of an obligation is performance. However, if performance would be overly burdensome, the court/arbitrator may order an award in damages instead.

The aim, with an award in damages, is to cover the harm caused in full, thus returning the injured party to his previous position before the harm had occurred.¹³

Article 172 of the Code permits apportionment and provides that *“if the creditor participates by his mistake in causing the damage arising from non-performance or delay, or increases such damage, the provisions of Article 128 of this law shall apply.”*¹⁴ Article 128 of the Code, which is detailed above, has the effect of reducing entitlement to damages in proportion with the fault of the Claimant.

Damages need to be determined (either in the contract or will be done so by the relevant court/arbitrator¹⁵) and can include loss of profits¹⁶. This is a major development as the courts in the Kingdom of Saudi Arabia have previously been reluctant to award loss of profits, as it has been argued that this conflicts with the Shari’ah prohibition of *gharar* (speculation, gambling).



Liquidated Damages

The KSA Civil Code has also clarified the framework for Liquidated Damages.

Parties are free to agree on liquidated damages according to Article 178 of the Code, which provides that *“the contracting parties may determine in advance the amount of compensation by stating it in the contract or in a subsequent agreement, unless the object of the obligation is a monetary amount, and no notice is required for the entitlement to compensation”*.¹⁷

The court or tribunal may however vary such an agreement, if:

- (1) the claimant did not suffer any actual damage, in which case, the pre-agreed contractual compensation will not be due at all;
- (2) the level of contractual compensation is exaggerated as compared with the actual loss incurred by the claimant, or if the obligation was completed in part, the amount of damages may be revised accordingly; and
- (3) the respondent committed fraud or a gross error that causes the claimant a loss greater than that stipulated by the liquidated damages clause, in which case the amount of damages may be revised upwards to correspond with the actual loss.

Non-Performance / Exceptional Circumstances

Article 94 provides that a contract can only be revoked or amended by mutual consent of the parties, or in accordance with a statutory provision. Therefore – unless otherwise allowed by a statutory provision or mutually agreed by the parties – each of the contracting parties must fulfill their obligations under the contract and has no right to terminate or amend the contract unilaterally.

Articles 110 and 294 deal with impossibility of performance of obligations. They provide that if performance of the contract becomes impossible due to reasons which are out of control of the debtor, then the contract will be automatically rescinded and the obligor will be released from its obligation. However, Article 110 also stipulates that *“if the impossibility is partial, the obligation shall be extinguished only in respect of the impossible part”*.¹⁸

Further to this, if performance of a contract is possible but is rendered onerous, then Article 97 of the Code applies, enabling the aggrieved party to request a renegotiation. The Article stipulates that *“if general exceptional circumstances arise that could not have been anticipated at the time of contracting and their occurrence results in the performance of the contractual obligation becoming burdensome for the debtor such that it threatens him with a heavy loss, he may, without undue delay, invite the other party to negotiate.”*¹⁹ This by no means gives a party the right to stop performing its obligations. If the renegotiation as provided for under Article 97 fails and an agreement is not reached between the parties within a reasonable time, the court/arbitrator may reduce the obligation to an *“adequate level”*²⁰. However, it is worth highlighting that the exceptional circumstances required to trigger Article 97 must be *“general”*, meaning that they must affect the wider population and not the debtor only.

Article 471(3) of the Code, which falls within the Muqawala provisions, provides wide ranging powers for the court/ arbitrator to adjust terms of the contract in order to restore the balance between the parties when exceptional circumstances of a general nature have radically changed the equilibrium between the parties. For example, the court can extend the performance period for a contractor, adjust the remuneration, or in some cases, terminate the contract.

Exclusion/Liability

According to Article 173(1) of the Code, contractual liability can be limited or excluded by agreement between the parties. However, such a provision can be set aside where the relevant breach is fraudulent or constitutes gross negligence/serious default.

Moreover, Article 173(2) of the Code prevents exclusion of liability in respect of tortious claims.

Prescription Period/Time Bars

One of the most significant changes introduced by the Code is a limitation on the period within which claims may be brought as, under the ‘old law’, there was no prescription (or limitation) period. These particular provisions do not have retrospective effect.

According to Article 299 of the Code, the respective limitation periods (see next page) begin to run from the day on which the relevant right arose. Moreover, it is not permissible for parties to agree on making a limitation period shorter or longer (Article 305(1)).

In relation to tort claims, Article 143(1) provides that claims must be brought within three years of “*the date on which the injured party became aware of the occurrence of the damage and of the person responsible for it.*”²¹ Further to this, that in all cases, a lawsuit shall not be heard after a period of 10 years from the date of the damage.

In relation to claims in contract, Articles 295 to 297 of the KSA Civil Code set out the relevant limitation periods.

- Article 295 provides a general limitation period, that no legal action will be heard after 10 years.
- Article 296 imposes a 5 year limitation period for claims for professional fees and periodic renewable rights.
- Article 297 provides a 1 year limitation period for certain consumer and employment contracts.

As provided in Article 2 of the Code, the periods and dates mentioned in the Code are to be calculated according to the Islamic Hijri calendar which consists of between 354 and 355 days per annum.

It is worth noting that these limitation periods can be interrupted in the following cases:

- the debtor’s acknowledgement of the right, expressly or implicitly (Article 302(a));
- a judicial claim, even when made before a court which lacks jurisdiction (Article 302(b));
- any other judicial action taken by the creditor to invoke his right (Article 302(c));
- whenever there is a lawful excuse that makes it impossible to claim the right (Article 300(1)), including the “*bona fide negotiations between the parties that are ongoing upon completion of the prescription period [...]*” (Article 300(2)).

Notably, once the prescription period is interrupted, a new prescription period “similar” to the first will commence “*as of the cessation of the effect resulting from the cause of the interruption.*” (Article 304(1)). This stands in contrast with the legal position in other jurisdictions where the original prescription period resumes once the interrupting event has ceased to have effect.



Conclusion

Whilst it remains to be seen exactly how the KSA Civil Code will be applied in practice and interpreted by the courts and arbitrators, there is no doubt that it is a welcomed legal development in the Kingdom of Saudi Arabia.

In particular, as discussed in this section, the KSA Civil Code offers clarity in relation to key principles relevant to contracts with Saudi law as the governing law. It has codified the Shari'ah requirement for contracting parties to act in good faith²² and has brought clarity to an array of contractual principles, ranging from contract formation to compensation and exclusion of liability. Finally, the Code has introduced limitation periods²³ into the law of the Kingdom of Saudi Arabia and so recognises that relations and rights are better protected when individuals and companies are obliged to bring their claims within a certain period.



Endnotes

- 1 Saudi Arabia Cabinet Decision No. 820/1444 Civil Transactions Law promulgated by Saudi Arabia Royal Decree No. M191/1444 (the “KSA Civil Code” or the “Code”).
- 2 Article 1 of the KSA Civil Code.
- 3 Preamble, Fifth Decision of the KSA Civil Code.
- 4 Article 37(1) of the KSA Civil Code.
- 5 Article 46 of the KSA Civil Code.
- 6 Article 95(1) of the KSA Civil Code.
- 7 Article 720, Rule 40 of the KSA Civil Code.
- 8 Article 68 of the KSA Civil Code.
- 9 Article 94(1) of the KSA Civil Code.
- 10 Article 120 of the KSA Civil Code.
- 11 Article 125 of the KSA Civil Code.
- 12 Article 128 of the KSA Civil Code.
- 13 Article 136 of the KSA Civil Code, which provides: “[c]ompensation shall be in full compensation for the damage; by returning the damaged to the situation in which he was or would have been without the damage.”
- 14 Article 172 of the KSA Civil Code.
- 15 Article 180 of the KSA Civil Code, which provides: “[i]f the compensation is not determined in the contract or under a statutory provision, the court shall assess it in accordance with the provisions of Articles (136), (137), (138) and (139) of this Law.”
- 16 Article 137 of the KSA Civil Code, which provides: “[t]he damage for which the liable party shall compensate shall be determined by the extent of the loss and loss of profits suffered by the injured party...”.
- 17 Article 178 of the KSA Civil Code.
- 18 Article 110(2) of the KSA Civil Code.
- 19 Article 97(1) of the KSA Civil Code.
- 20 Article 97(3) of the KSA Civil Code.
- 21 Article 143(1) of the KSA Civil Code.
- 22 Article 95(1) of the KSA Civil Code.
- 23 Articles 295 to 297 of the KSA Civil Code.

The Saudi Center for Commercial Arbitration – The 2023 Rules

On 1 May 2023, the Saudi Center for Commercial Arbitration (“**SCCA**”) published its revised Arbitration Rules (the “**2023 Rules**”), aiming at strengthening the governance and efficiency of arbitrations overseen by the SCCA. Below, we set out some of the key changes introduced by the 2023 Rules.

Key changes

Establishment of the SCCA Court

The SCCA has established the SCCA Court (the “Court”), a body independent of the SCCA, mirroring the approach adopted by other leading institutions. The Court will be responsible for making decisions on a number of key administrative and procedural issues arising during the course of arbitration proceedings, including (1) appointing emergency arbitrators; (2) deciding on jurisdictional objections; (3) reviewing challenges to arbitrators; and (4) reviewing consolidation requests.

Expanded Scope of the Arbitral Tribunal’s Discretionary Powers

The arbitral tribunal is empowered to determine a number of issues with a view to ensuring the efficiency and integrity of arbitration proceedings. These include the power to determine the appropriateness of holding a hearing and its format, encourage parties to resolve their dispute by negotiations or mediations, and limit the length of written submissions as well as requests for document production and/or testimony of any witness.

Timelines for Decisions

Arbitral tribunals are required to issue final awards within 75 days from the close of proceedings, while Emergency Arbitrators are required to issue an interim order or award no later than 15 days from receiving the file. The imposition of a strict time limit is the norm in emergency arbitrations to ensure the effectiveness of interim relief measures, such as injunctions.

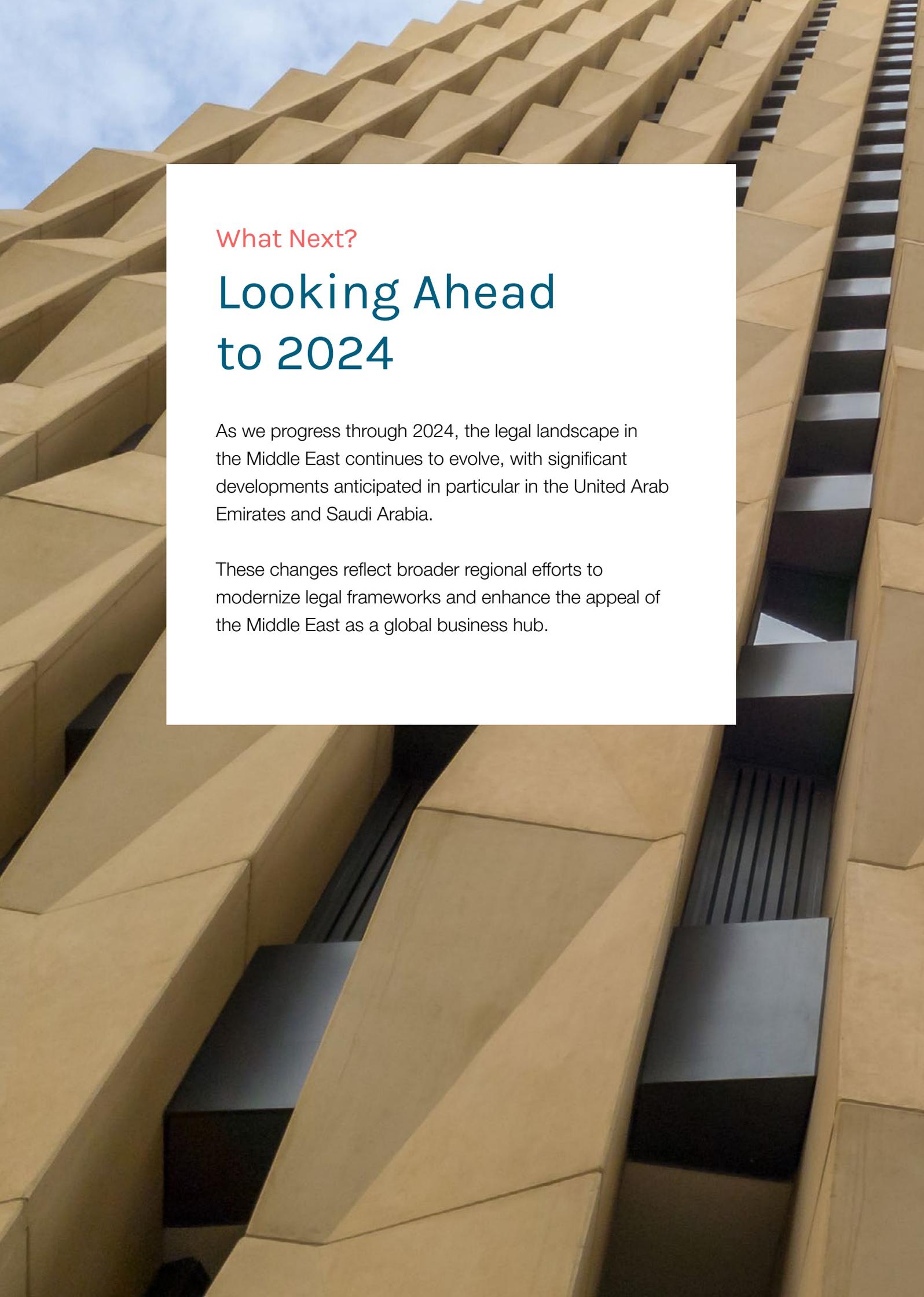
Consolidation

Following in the footsteps of other major arbitral institutions in the region, the 2023 Rules empower the Court to consolidate two or more arbitrations, aiming to ensure that disputes arising from the same legal relationship can be resolved efficiently.

Third-party Funding

The 2023 Rules mandate that parties must disclose the identity of any non-party who has an economic interest in the arbitration’s outcome, including any third-party funder.

Founded in 2014, the SCCA, while gaining recognition and an increasing number of cases in recent years, is still a comparatively new institution. The 2023 Rules clearly demonstrate its dedication to aligning its practices and governance with international norms and reinforcing its position within the region.



What Next?

Looking Ahead to 2024

As we progress through 2024, the legal landscape in the Middle East continues to evolve, with significant developments anticipated in particular in the United Arab Emirates and Saudi Arabia.

These changes reflect broader regional efforts to modernize legal frameworks and enhance the appeal of the Middle East as a global business hub.

UAE – Expansion of DIFC Courts’ Jurisdiction

The government of Dubai is considering implementing a common law framework across all the Emirate’s free zone jurisdictions, effectively expanding the application of English common law in the region beyond the DIFC. The initiative aligns with Dubai’s wider ambitions, as set out in the Dubai Economic Agenda D33, aiming to position Dubai among the top three global economic hubs in the world.

The Dubai government has launched a consultation, open for public input, offering two potential systems: one hybrid system and a standalone system. Under the hybrid system, the DIFC Courts would be responsible for adjudicating and overseeing disputes, but UAE laws would apply by defaults, except with regards to procedural and evidentiary rules in respect of which DIFC laws and rules would take precedence. The standalone system, on the other hand, would entail extending the entire legal framework of DIFC laws to selected free zones, with DIFC courts handling all respective disputes.

It remains unclear when (or if) either of the systems would be implemented, but businesses currently operating in the Dubai’s free zones should pay close attention to any development in this area of legal reform.

Saudi Arabia – The New Commercial Transactions Law

As part of a broader initiative to codify its existing laws, Saudi Arabia is currently developing the “Commercial Transactions Law”. The new law is expected to regulate most commercial contracts, including purchase and sale agreements, liquidation sale contracts, public auctions contracts, and supply contracts; it will also include provisions on bills of exchange, checks and promissory notes. As highlighted in this Compendium, this new law is anticipated to supersede the Civil Transactions Law in areas related to commercial and financial dealings, except where it does not provide specific guidance.

It is yet to be seen how the Commercial Transactions Law will complement the existing Civil Transactions Law, but it is expected to become an important source of law for businesses operating in the region as Saudi Arabia strives to create a more business-friendly environment.

Qatar

Since the introduction of the new Qatar Arbitration Law in 2017, Qatar has not enacted significant updates to its framework for international dispute resolution. However, considering recent initiatives by regional leaders such as the UAE and Saudi Arabia to modernize their legal systems, it seems reasonable to predict that Qatar might be considering updates to its arbitration framework in 2024. An area of potential reform could be the arbitration rules of the Qatar International Centre for Conciliation and Arbitration (QICCA), the only permanent arbitration institution in Qatar. Despite previous announcements promising updates in 2022, the rules still lack consolidation mechanisms and third-party funding provisions.



United Arab Emirates Select Experience

A CONTRACTOR

Multi-billion dollar

On a multi-billion-dollar dirham claim in DIAC arbitration proceedings in regard to a high-profile mixed-use development in Dubai.

AN EMPLOYER

Terms confidential

In ad-hoc arbitration proceedings in respect of claims made by a contractor in relation to a major international airport project in the GCC.

AN EMPLOYER

Multi-billion dollar

In a multi-billion-dollar dirham claim in DIAC arbitration proceedings; the matter related to a major infrastructure project in the Middle East.

A VERTICAL TRANSPORTATION CONTRACTOR

Terms confidential

In DIAC administered arbitration proceedings in a dispute concerning the non-payment of invoices and allegations relating to level of maintenance following the termination of service agreements for a major infrastructure project in Dubai.

INTERNATIONAL CONTRACTOR

Terms confidential

ICC arbitration relating to a high profile multi-billion metro project in the Middle East, one of the biggest infrastructure projects in the world. The dispute arises under multiple works contracts and concerns various elements of the overall works, including bridges, viaducts and the underground metro stations.

THE EMPLOYER

Terms confidential

In DIAC Arbitration proceedings it instigated against a consultant for defective design of the chilled water system and structures. This related to an iconic water park in the UAE.

A SUBCONTRACTOR

AED200 million

In DIAC arbitration proceedings in relation to a AED200m dispute against the main contractor following termination; the project related to a mixed-use development in Dubai comprising of a mall, residences and a hotel.

A MEP SUBCONTRACTOR

AED100 million

In DIAC arbitration proceedings in respect of claims worth circa AED100m made by the contractor following the termination of a subcontract including allegations of defects and seeking an indemnity for damages allegedly incurred by the contractor at main contract level. The project was a major mixed-use development in Dubai including a mall, office tower and a hotel.

A VERTICAL TRANSPORTATION CONTRACTOR

Terms confidential

In DIAC administered arbitration proceedings in a dispute concerning the non-payment of invoices and allegations relating to level of maintenance following the termination of service contracts for a major infrastructure project in Dubai.



A MEP SUBCONTRACTOR

Terms confidential

In DIAC arbitration proceedings in relation to a final account dispute with the main contractor. The project was a medical facility in the UAE. The dispute concerned entitlement to variations, extension of time and prolongation costs.

LEADING TURKISH EPC CONTRACTOR

US\$750 million

Arbitration proceedings concerning outstanding payments owed in relation to a US\$750 million road transport construction project in the Middle East.

AN INVESTMENT BANK

Terms confidential

In DIFC-LCIA arbitration proceedings in respect of claims of fraudulent misrepresentation made by a shareholder. The proceedings involved counterclaims for breaches of a suite of shareholder agreements.

ONE OF THE WORLD'S LARGEST OIL EXPLORATION COMPANIES

Multi-billion dollar

In negotiations for new terms and structure in respect of a multi-billion dollar long term concession agreement for one of largest oilfields in the GCC.

A STATE-OWNED ENTITY

Terms confidential

In arbitration proceedings against a provider of technology services. The dispute concerned the scope and quality of the services provided, losses arising from non-performance, and entitlement to further payments for the alleged breaches.

AN INVESTMENT BANK

Terms confidential

In DIFC-LCIA arbitration proceedings in respect of claims of fraudulent misrepresentation. The matter also involved injunctive and ancillary proceedings in the DIFC Courts and the local courts in Sharjah, and counterclaims for breaches of promissory notes and the shareholders' agreement.

THE CLAIMANT

Terms confidential

In DIAC arbitration proceedings in a dispute concerning the non-payment of sums due under an assignment agreement.

ONE OF THE WORLD'S LARGEST TECH COMPANIES

Terms confidential

In relation to a dispute with a GCC government entity following the termination of a services agreement for the design and implementation of software for a major airport services provider.

MULTIPLE RESPONDENTS

Terms confidential

In ICC proceedings brought by purchasers of shares in a wastewater treatment plant in the GCC. The dispute concerned allegations of breach of warranties relating to purported contamination.



A PRIVATE HOSPITAL AND CLINICS OPERATOR

Terms confidential

In a dispute with a services provider arising out of the termination of an agreement to provide RCM services across its network of hospitals and clinics in Dubai.

A GCC DEVELOPER OF LEISURE PROJECTS

Terms confidential

In a dispute with an US theme park developer and operator following the termination of a proposed theme park in the GCC. Issues included claims of misrepresentation and wrongful termination.

AN ITALIAN LUXURY RETAIL BRAND

Terms confidential

In ADGM Court proceedings following its termination of a franchise agreement covering Abu Dhabi. This was the first case before the ADGM Courts.

A UAE DISTRIBUTOR

US\$40 million

In ICC arbitration proceedings initiated by a Korean company with regards to distribution contracts for consumer goods in West Africa. The dispute was worth circa US\$40m.

Qatar – Select Experience



AN EPC CONTRACTOR

Terms confidential

On issues arising out of the iconic sharq crossing project connecting the airport to the pearl, which was ultimately abandoned.

THE MAIN CONTRACTOR

Terms confidential

In relation to a series of disputes involving a rail project in Qatar. This included multiple arbitration proceedings.

AN EMPLOYER

Terms confidential

In an LCIA arbitration proceedings relating to a dispute concerning the refurbishment of an offshore oil production facility in Qatar. The major issues were entitlement and cost of variations, whether an EOT was due and prolongation costs.

A SUBCONTRACTOR

Terms confidential

On its rights and entitlements following termination of its subcontract by a multinational JV main contractor on a rail project in Qatar on the grounds of an alleged *force majeure* event.

A EUROPEAN SUBCONTRACTOR

Terms confidential

In a dispute relating to entitlement to extensions of time and prolongation costs with an Asian EPC contractor in respect of a substation for an independent water and power plant in Qatar.

A MAJOR INTERNATIONAL CONSULTANCY

Terms confidential

In court proceedings in respect of unpaid invoices for consultancy services relating to the design of a tower in Doha.

A EUROPEAN CONTRACTOR

Terms confidential

On its claims for an extension of time and prolongation costs in relation to a major infrastructure project in Doha, Qatar.

AN ASIAN CONTRACTOR

Terms confidential

Acting as project counsel advising on contract negotiations for the main contract and ancillary documents with the employer and agreements with its JV partners. We subsequently advised them on issues which arose during the course of the project. The project was a multi-billion dollar infrastructure project in Doha.

AN INTERNATIONAL CONSTRUCTION COMPANY

Terms confidential

In a breach of contract case involving a services contract, stemming from a high profile multi-billion dollar construction project in Qatar.

AN EMPLOYER

Terms confidential

Advising an Employer on claims made by a contractor for an extension of time and prolongation costs. The project was an educational facility.

AN ASIAN CONTRACTOR

Terms confidential

On the terms of an EPC contract with the owner in respect of an onshore LNG facilities project in Qatar.



Saudi Arabia – Select Experience

FLUOR

Terms confidential

ICC arbitral proceedings on behalf of an EPCM contractor arising out of Sadara's world-class petrochemical complex at Jubail, Saudi Arabia, including issues relating to non-payment of invoices, delays, and the quality of engineering, procurement, and construction management services.

MULTIPLE RESPONDENTS

US\$175 million

In ICC proceedings, defending claims by multiple claimants including a major Saudi private equity fund totalling USD175 million in relation to a put option over shares and rent payments under commercial leases in Dubai used for a school. Issues included the applicability of Shari'ah law or English law and public policy.

A MAJOR INTERNATIONAL CONSULTANCY

Terms confidential

In relation to a dispute with its consortium partners arising from the development, operation and maintenance of an airport in Saudi Arabia.

GERMAN FAÇADE SPECIALIST

US\$100 million

Representing a German façade specialist in a ICC arbitration against a main contractor regarding an architecturally designed research facility in the Kingdom of Saudi Arabia.

AN INVESTMENT VEHICLE OF A PRIVATE EQUITY CLIENT

Terms confidential

On a dispute between the owners and franchisee of two fast food brands (one in the pizza industry, the other the burger market). These disputes have involved court proceedings in the UAE, along with related proceedings in the Kingdom of Saudi Arabia and an arbitration in the United States.

AN ASIAN EPC CONTRACTOR

Terms confidential

In respect of a claim brought by one of its subcontractors that it procured a breach of an agreement with one of its suppliers. The project related to a gas processing plant in Saudi Arabia.

A KOREAN CONTRACTOR

Terms confidential

In respect of substantial claims brought in respect of a major infrastructure project in Saudi Arabia. The governing law was Saudi law and the exercise involved an extensive review of Shari'ah law principles.

LEADING TURKISH EPC CONTRACTOR

US\$750 million

Arbitration proceedings concerning outstanding payments owed in relation to a US\$750 million road transport construction project in the Middle East.

AN INTERNATIONAL CONSTRUCTION AND ENGINEERING COMPANY

Terms confidential

In a claim relating to an ethylene plant in Saudi Arabia.

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