



Shaping your arbitration: How do the institutional arbitration rules compare?

The adoption of arbitration agreements within international construction contracts continues to be popular. Arbitration, rather than deference to the national courts, allows parties to retain a large element of control as to how any subsequent dispute will be settled. Parties can specify the applicable rules, a sole arbitrator or a panel, particular qualities and experience as well as the language of proceedings all from the outset of their professional relationship.

However, this opportunity to shape how any future dispute will be resolved may not be used to its full potential or at all. Often termed the 'midnight clause' the agreement to arbitrate can be given scant attention when compared with the detailed terms of the parties' bargain and issues that are unknown or could not have been foreseen when executing the contract may arise. These can include jurisdiction, procedural rules, mandatory laws and authority, coupled with unilateral changes or as we have seen recently, the abolishment of entire arbitral centres¹.

A good starting point is to ensure that the agreement to arbitrate incorporates the rules of one of the leading arbitral institutes. With several notable longstanding arbitral institutions, each with its own arbitration rules, the choice as to which one should be adopted in an arbitration agreement is an important one and should not be overlooked. From the ICC, who has reported that it was "*the world's most preferred arbitral institute*"² to

more localised arbitration centres, which set of rules should be selected?

Trowers' International Construction Team conduct arbitrations across multiple jurisdictions, including across the GCC and the UK, and we have experience of many different institutional rules. We have compared the key features of the Dubai International Arbitration Centre (**DIAC**) Arbitration Rules 2022 with the available arbitration rules in major GCC jurisdictions in which we work (namely the United Arab Emirates (**UAE**), Kingdom of Saudi Arabia (**KSA**), the Kingdom of Bahrain (**Bahrain**), the Sultanate of Oman (**Oman**)) as well as the United Kingdom.

¹ The issuance of Decree 34/2021 abolished the Emirates Maritime Arbitration Centre and the Arbitration Institute of Dubai International Financial Centre (DIFC), effectively centralising arbitration within Dubai International Arbitration Centre (DIAC). The DIAC Arbitration Rules 2022 (DIAC 2022 Rules) were published on 2 March 2022 and will come

into effect on 21 March 2022, applicable to all new requests for arbitration submitted to DIAC after 21 March 2022.

² <https://iccwbo.org/media-wall/news-speeches/icc-worlds-most-preferred-arbitral-institute-global-survey-finds/>

Whilst no one set of arbitration rules will suit every case, it is important to know and understand the implications of the chosen arbitration rules. Parties should ask themselves, in determining which rules are most suitable for their arbitration agreement, the following questions:

- Whether your position/needs can be met by the chosen arbitral rules?
- Speed in which a decision is required: is access to expedited and summary procedures required (perhaps if project(s) are ongoing)?
- Is certainty on fees/costs a priority?
- What level of scrutiny and involvement by the arbitral body is required?
- Are there any concerns regarding notification of third-party funding?
- The approximate values of the disputes that are likely to arise from the project.
- Do you want to avoid court involvement for all aspects and for all disputes?
- Does the underlying contract involve multiple parties?

In doing so it ensures that the agreement to arbitrate is properly considered and tailored to the parties' specific agreement subject matter, meaning that everyone is clear as to what rules of any subsequent dispute apply.

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	DIAC Arbitration Rules 2022 (DIAC 2022 Rules)	Saudi Center for Commercial Arbitration (SCCA)	Bahrain Chamber for Dispute Resolution Arbitration Rules 2017 (BCDR Rules)	Oman Commercial Arbitration Centre Rules (OCAC Rules)	ICC Rules of Arbitration (ICC Rules)	London Court of International Arbitration Rules (LCIA Rules)
Fees	<p>Tribunal has authority to fix the costs of arbitration including the fees and reasonable legal costs incurred by the parties</p> <p>AED 5,000 registration fee for any claim/counterclaim filed for disputed amounts up to AED 200,000 (costs for claims above AED 200,000 are assessed by reference to the amount in dispute)</p> <p>Admin and Tribunal costs are by assessed reference to the amount in dispute</p>	<p>Registration Fee: SAR 5,000 for any claim/counterclaim filed for disputed amounts up to AED 200,000 (costs for claims above AED 200,000 are assessed by reference to the amount in dispute)</p> <p>Admin and Tribunal costs are by assessed reference to the amount in dispute</p> <p>Tribunal has authority to fix the costs of arbitration including the fees and expenses of the parties' legal representatives.</p> <p>Tribunal does not have the power to award interest. Interest, damages for</p>	<p>Tribunal has authority to fix the costs of arbitration including the fees and reasonable legal costs incurred by the parties</p> <p>A non-refundable filing fee of USD3,000 is payable with the request for arbitration.</p>	<p>Tribunal has authority to fix the costs of arbitration including the fees and reasonable legal costs incurred by the parties</p> <p>Registration fee OMR 500</p> <p>Admin and Tribunal costs are by assessed reference to the amount in dispute</p>	<p>Tribunal has authority to fix the costs of arbitration including the fees and reasonable legal costs incurred by the parties</p> <p>USD 5,000 registration fee for any claim/counterclaim filed</p> <p>Admin and Tribunal costs are by assessed reference to the amount in dispute</p>	<p>Registration Fee: £1950</p> <p>LCIA Admin Hourly Rate: £165 to £280</p> <p>Tribunal Costs: hourly rate basis for work undertaken plus disbursements</p>

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		consequential loss and punitive or exemplary damages are contrary to Shari'a law and are unenforceable.				
Deadline for issuance of final award	6 months from the date of transfer of the file to sole arbitrator/chairperson (in even of three-member Tribunal) subject to extensions as the Tribunal may decide	Within 60 days from the date of the closing of the hearing (unless agreed by the parties, specified by law or determined by the Administrator)	Within 30 days from the date of the close of proceedings (unless otherwise agreed by the parties or determined by the Chamber)	Within 6 months of the last signature of the execution of the Terms of Reference	Within 6 months of the last signature of the execution of the Terms of Reference	Silent
Arbitral Body Involvement	High	Low	Low	Low	High	High
Confidentiality provisions	Yes	Yes	Yes	Yes	Mixed	Yes
Seat	In absence of a seat being specified in the contract, the default is DIFC	In absence of a seat being specified in the contract, the Tribunal has the power to choose the seat	In absence of a seat being specified in the contract, the Tribunal has the power to choose the seat.	In absence of a seat being specified in the contract the default is Muscat, Oman.	In absence of a seat being specified in the contract, the Tribunal has the power to choose the seat	In absence of a seat being specified in the contract and / or agreed between the parties, the default is London, UK.
Language	In absence of the contract specifying	In absence of the contract specifying	Language(s) or prevailing language	In absence of parties' agreement, the	In absence of the contract specifying	Language(s) or prevailing language

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	the language of the arbitration proceedings, the Tribunal has the power to determine the language of the proceedings	the language of the arbitration proceedings, the Tribunal has the power to determine the language of the proceedings	of the Arbitration Agreement, unless otherwise agreed by the parties	Tribunal has the power to determine the language of the proceedings.	the language of the arbitration proceedings, the Tribunal has the power to determine the language of the proceedings	of the Arbitration Agreement, unless otherwise agreed by the parties
Consolidation permitted	Yes	Silent	Yes	Yes	Yes	Yes
Joinder permitted	Yes	Yes	Yes	Yes	Yes	Yes
Expedited Proceedings	Yes Claims: AED 1 million or less (approximately USD 272,300) or if the parties agree or if the case is of exceptional urgency	Yes Claims: not exceeding SAR 4,000,000 (approximately USD 1,066,200)	Yes Claims: less than USD 1 million (providing parties have not agreed in writing that the expedited procedure will not apply) Or If parties agree in writing expedited rules are to apply irrespective of value	Yes Claims: less than OMR 500,000 (approximately USD 1.2 million) or if the parties agree, or the case is of urgency as determined by the Executive Committee	Yes Claims: less than USD 2 million (for arbitration agreements concluded between 1 March 2017 and 1 January 2021); or less than USD 3 million (for arbitration agreements concluded on or after 1 January 2023). Or	Yes Application to the LCIA Court

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					If the parties agree the expedited rules are to apply	
Third-party Funding permitted?	Yes - prompt disclosure required	Silent	Silent	Silent	Yes – prompt disclosure required	Silent
Interim Measures and Security for Costs provisions?	Yes	Yes	Yes	Yes	Yes	Yes