

# White list / Institutions Worth a Closer Look - Middle East & Africa

16 September 2024

## Overview

In 1997, Judge Charles Brower published a piece in *The American Journal of International Law* on the history of arbitration in the Middle East. It described “three phases”.

Phase one – World War II to the 1970s – comprised cases ending poorly for the Arab side, usually a state - such as *Petroleum Development (Trucial Coast) Ltd v Sheikh of Abu Dhabi*. In those cases, European arbitrators gave short shrift to arguments from shariah law.

Phase two was thus a shunning of arbitration in the region. Little wonder, perhaps.

But not for long. Arbitration-is dear to Arab tribal culture, it turns out. As Bahraini Minister of Justice, Sheikh Khalid bin Ali Al Khalifa, once said, “Arbitration harmonises with an Arab’s psychological make-up – which is imbued with sentimentalism and which is more at home with a spirit of peace, goodwill and conciliatory brotherhood.”

So phase three was the re-embrace and flowering of regional arbitration providers, to the point where – as Reza Mohtashami QC (a GAR editorial board member and Three Crowns partner), quipped at a GAR event – “the tiny island of Bahrain is [now] home to three arbitral centres.”

And this latest phase shows no sign of abating. In just the past few years, Saudi Arabia has launched a new centre (amid much fanfare), Abu Dhabi is about to, and others (notably in Bahrain and Dubai) are tying to bulk up.

So is the Middle East now a proverbial arbitral paradise?

Not entirely. There’s still a certain capacity to surprise. Not so long ago the UAE (briefly) stripped arbitrators of their immunity and threatened to impound their passports (since clarified and reversed). More recently, Dubai expunged an arbitral institution (the very successful DIFC-LCIA), which has left some questioning its safety as a seat. Time will tell if those wounds will heal.

Judges have historically been a weak point.

Essam Al Tamimi, one of the UAE's most revered arbitration specialists, once put it thus. "There has been a persistent lack of certainty", he said, on how a court will respond to an arbitration point."

"You will bring the same case you brought last year – and which got a good result [then] - put it back in the same pipeline and get a bad judgment, different from the previous one," he told a GAR event in Istanbul.

Happily, these things may be improving. In the same speech, Al Tamimi noted that arbitration is now a core syllabus subject for lawyers training in the Arab League, so "90 per cent of judges will be properly trained in it, not just 10 per cent like now."

Free-zones have helped. Across the region special financial "free-zones" are flourishing: the Qatar Financial Centre, the Abu Dhabi Global Market, and their equivalents in Bahrain. And Dubai's "DIFC".

These free zones often have their own courts, run by foreign judges. In turn, these exert an improving influence on their local counterparts. As someone explained to GAR, it's a bit like when the first house in a somewhat run-down street is renovated. All the other homeowners begin to feel a bit more embarrassed about the state of their property.

So regional arbitration in Middle East, if it's suggested, should always be considered.

In Africa – a little more caution is advised, but the direction of travel is good. There are now two regional African arbitration associations – around which an arbitration bar is crystallising (see the Clubs & Associations directory). That should in turn, raise arbitration literacy and in turn create more safe arbitral seats. At present there aren't enough safe seats.

Erring on the side of caution, for now, we include just two African centres in our selections below.

Here, then, are our recommendations for the Middle East and Africa.

### **White List**

- Bahrain Chamber of Dispute Resolution (BCDR) - *promoted from Worth a Closer Look in 2023*
- Cairo Regional Centre for International Commercial Arbitration (CRCICA)
- Dubai International Arbitration Centre (DIAC) - *promoted from Worth a Closer Look this edition*

### **Institutions Worth a Closer Look**

- ArbitrateAD - *previously the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC)*

- Casablanca International Mediation and Arbitration Centre (CIMAC)
- Common Court of Justice and Arbitration (CCJA)
- Kigali International Arbitration Centre (KIAC)
- Mauritius International Arbitration Centre (MIAC)
- Qatar International Centre for Conciliation and Arbitration (QICCA)
- Saudi Centre for Commercial Arbitration (SCCA)

## **White List**

### **Bahrain Chamber of Dispute Resolution (BCDR)**

#### **What is it?**

Initially it was a partnership between the Bahrain Ministry of Justice and the American Arbitration Association, which launched in 2010, inside an “arbitration free zone”.

Since then it has dropped the AAA association and is now known simply as the BCDR.

#### **What’s an arbitration free zone?**

Parties can nominate the law of any country to govern their arbitration, creating a virtual seat. It means awards can’t be challenged before the local courts.

#### **It wasn’t always on the White List – why did you promote it?**

The BCDR always appeared to be a well-run institution with a growing reputation in the region and the backing of a great board, that included such luminaries as Stephan Jagusch KC, Reza Mohtashami KC, Elie Kleiman and Jan Paulsson. It was especially good on the academic and thought-leadership side, and has begun to rival the Cairo centre as an educator on arbitration for the Arab world.

It wasn’t on the White List because of some uncertainty on our part regarding its case numbers (explained below). But that’s now gone away, and after it did we immediately moved it higher.

#### **Who should take credit?**

Nassib Ziadé its former CEO. it was under his watch the BCDR properly grew.

He arrived in 2013 after running the DIAC in Dubai. Before that, he was de facto head, of ICSID (the International Centre for Settlement of Investment Disputes in Washington, DC). He’s Lebanese-Chilean.

Ziadé resigned in 2023, to concentrate on his practice as an arbitrator. He also joined the UN' appeals tribunal - the highest court in the United Nation's internal justice system.

He's been replaced by Ahmed Husain, the former registrar, who has just been given the job permanently, after starting as 'interim'. Husain is a distinguished local practitioner who has been with BCDR since the beginning. While Ziadé and he were a team it was regarded as useful that one was "international" and the other from Bahrain.

### **How busy is it?**

This was the mystery for many years. The BCDR didn't seem to like releasing statistics. That's now changed.

An early draft of its annual reports shows it had 53 new cases in 2023 (up on 45 in 22) and its highest figure for three years. It's been averaging 47 new cases a year, of late.

Of those 44 were "section one" cases – which go to the BCDR Court – and nine were "section two", an important distinction. It's now had 38 section two cases in four years.

### **What's the significance of "section one" and "section two"?**

The BCDR has been given "automatic jurisdiction" over certain disputes (any that exceed US\$1.3 million in value and either feature a licensed financial institution or are of an "international commercial nature", which usually means one side is foreign).

These are "section one cases", also known as the "going to the BCDR Court".

With section one cases, the parties haven't "opted in", as one usually does, to regular arbitration. There's no element of "consent to arbitration". The process is a little different too. For section one cases, both wing arbitrators have to be local judges, who get appointed to the tribunal by a judicial committee. Only the president of the tribunal is appointed by the BCDR. As a result, some have suggested the BCDR should be viewed more like the DIFC or ADGM courts than an arbitral institution. Many of the "local judges" are recognised arbitration practitioners from other parts of the region.

### **But does the BCDR hear "ordinary" arbitrations too?**

It does – under what's known as a "section two". Section two cases are arbitration as commonly understood (ie, based on consent expressed in an arbitration clause).

In its life the BCDR has heard a lot more section one cases than section two. Of the 350+ requests it received, 51 were section two.

Many of the section two cases, however, have been big ticket items. And 36 of them (more than two-thirds) have arisen since 2020. So the BCDR is now ratcheting up experience on section two.

It's in part because of the increase in section two figures that GAR gave the BCDR its coveted "arbitral institution that has impressed award" in 2022, and why we promoted it to the White List a year later.

### **What does the BCDR say about the mismatch between section one and two numbers?**

It downplays the importance. It says that the skills required for both tracks are identical, and that section one cases can be thought of as "the best of both worlds" – arbitration meets litigation.

It does mean though that the BCDR is a bit less experienced than one might expect in dealing with arbitrator challenges. Until recently it had only dealt with around four in its whole 10 years, none requiring a final decision.

The low number of challenges could be seen as a good thing - the result of hygiene elements in its rules working (for example the prohibition against double hatting by chairs hearing section one cases). Still, it is something different about the BCDR vis-à-vis other institutions.

### **You say "until recently" ...**

Yes. The BCDR has now delivered at least one full challenge decision. The 28-page decision by Nassib Ziadé from 2022 is in the public domain. It deals with, among other things, double-hatting.

### **Are there any other recent developments?**

In 2022, the PCA asked it to be an appointing authority for the first time. It's performed the role several times since.

In 2023 it heard two section one cases in English - a first made possible by a recent government decree removing restrictions on the use of English in Bahraini courts and indeed mandating it in certain circumstances. Those cases were heard by tribunals comprising : Judge Jan Paulsson Judge Nadine Debbas Schkar and Mohammed Abdel Roauf; and Judge Jan Paulsson, Judge Amani Khalifa and Karim Youssef.

### **What does it do away from casework?**

The BCDR is a big educator in the wider Arab world. It conducts judicial training (with ICCA) and translates key texts (eg, the ICCA's guide to the New York Convention) into Arabic.

It also has several regular publications, including a much-praised arbitration journal. One trusted GAR source in the region said he is “seriously impressed” with the BCDR’s academic output. It also keeps its website immaculately up to date and organises a large pre-Vis-Moot moot, which now has 650+ alumni. And it represents Bahrain at UNCITRAL.

### **What are the rules like?**

They’re seen as good. They had a big update in 2017 – led by Ziadé. Adrian Winstanley (formerly the director general of the LCIA) and Antonio Parra, former deputy secretary general of ICSID assisted. Those were updated in 2022. The 2022 update added provisions on third party funding and security for costs.

### **Isn't there a plan for Bahrain to become regional hub?**

That's always been the plan, in one form. In its early days, antipathy from the UAE and, even more, from Qatar (Bahrain’s historical rival over many issues) may have held things back.

A lot depends on what happens now with Saudi Arabia. The logic behind Bahrain as a seat, and arbitral centre, for many years was to “play Hong Kong” to Saudi’s China: The neutral but sympathetic place on the doorstep. But with Saudi Arabia opening up, and Dubai providing a lot of what once upon a time Bahrain had to offer, that simple idea has less resonance. So Bahrain may need a new idea. The government, it seems, now has one.

### **What's the government proposing?**

It has announced an even grander plan, in which it builds a version of Maxwell Chambers, in Singapore, and seeks to become a hub for the whole region. The [twin pillars](#) are a grand hearing centre - Bahrain Arbitration Bay - and the new, open-to-all international commercial court (with an appeal to Singapore). There's certainly a need for quality hearing space in the region. And Bahrain is easy to get to from most of the key neighbours.

### **What will that mean for the BCDR?**

It's too early, really, to say. The physical parts of the plan are very much work in progress. But in theory it represents a great opportunity, while also raising the spectre of more competition. On the other hand, the dawn of Maxwell Chambers proved to be the making of the SIAC. The magic might work twice.

## **Cairo Regional Centre for International Commercial Arbitration (CRCICA)**

### **Why is it on the White List?**

CRCICA is the “granddaddy” of Middle Eastern arbitration. It’s over 40 years old, has heard 1,000-plus cases, many of which were international, and is a general source of inspiration to other providers in the region, and more widely in Africa.

### **Who set it up?**

CRCICA was founded by the Asian–African Legal Consultative Organization (which also founded four other regional arbitration centres: the Asian International Arbitration Centre (the AIAC); the Lagos Regional Centre; the Tehran Regional Centre (TRAC); and the Nairobi Regional Centre.

But of those, Cairo has always had the most traction.

### **What are its strengths?**

It’s experienced – it’s old enough and busy enough to have seen most situations at least once – and generally well managed.

It's been vetted, twice now, by the African Development Bank. Both times it received ringing endorsement. [The most recent occasion](#) was 2022 (when the rapporteur was the swiss law firm LALIVE).

According to that report, the quality of the secretariat's work "compares with" the ICC, SCC and LCIA's. "We have received no negative feedback from the persons we interviewed [on] the administration of cases," they write.

"The case volume has stayed stable or even increased since our last report - showing users' confidence."

### **Who deserves the credit?**

CRCICA has had a series of highly respected directors. For many years it was led by Mohamed Aboul-Enein, a charismatic former judge and law professor who was one of the first regional figures to gain celebrity on the international arbitration circuit.

Tragically, he suffered a fatal car accident in 2008 (en route to an international arbitration event). He was succeeded, first, by Nabil Elaraby (an ex-diplomat and international judge) and when Elaraby became a minister by Mohamed Abdel Raouf.

More recently, Ismail Selim has been the director, with Dalia Hussein as deputy.

CRCICA has an "advisory committee", which is its version of a court (it takes all decisions on procedural questions). The current chair is Craig Tevendale, head of international arbitration at Herbert Smith Freehills, and its line up includes Samaa Haridi and Mohamed Shelbaya, among other influential names.

### **What’s its diet of work?**

Rivals like to joke that a typical CRCICA case is a small dispute heard by a three-person tribunal. Like all good jokes, there's a kernel of truth. But big disputes go there too. It's heard plenty of oil and gas and telecoms matters in its time, all worth billions of Egyptian pounds.

And the mix of users is genuinely international. In 2018 to pick a recent year somewhat at random it had 27 foreign parties: nine from the US, four from Saudi Arabia, three from Lebanon and from Russia, and one apiece from Italy, Belgium, China, Germany Kuwait, the Netherlands and the UK. For the past five or so years it's averaged between 18 and 34 foreign parties per year, from the middle East and further afield.

### **How busy is it?**

It had 83 new requests for arbitration in 2022, the most recent year for which we have figures. It's averaged between 70 and 90 new cases a year since 2012; its busiest ever year was 2016 (when it got 91).

### **Who gets appointed as arbitrator?**

It tends to appoint arbitrators from around its region, largely because most of its cases are in Arabic (historically 65 to 75 per cent). Parties can in theory appoint whomever they like – there's no list system or need for prior-approval from the centre.

### **Could more international names in time choose to sit there?**

Well, two French lawyers Caline Mouawad and Rocío Digón analysed CRCICA's 2011 rules for the International Journal of Arab Arbitration, and speculated as such. And CRCICA has several times increased its rate of pay (most recently in January 2024).

Arbitrators now stand to earn about 80 per cent of what they'd get at the ICC on a US\$15 million or US\$30 million case. Despite that, the number of 'big' international names with no link to the region who've sat on CRCICA cases is quite low. But it's also early days. Those rates only went up at the beginning of this year.

### **Is it true it is hoping to attract a lot of African work?**

CRCICA has said at various times that African work is its future. It believes that African parties are delighted to visit Cairo, to which there are lots of direct flights. It's also a lot more affordable for them than obvious other locations.

To that end over the years its put on various Africa-themed events including one "African arbitration week", partnering with the ICCA, in 2017. Recently though it hasn't had many African parties, or certainly not sub-Saharan.

## **What else does it do?**

CRCICA is pretty good at educational and outreach programmes. It's partnered with part of the American Bar Association on programmes aimed at newly qualified lawyers since 2009.

More recently, it created four courses, one on each phase of an arbitration, in tandem with the Cairo branch of the Chartered Institute of Arbitrators. From time to time it runs international arbitration advocacy training based on the GAR Guide to Advocacy.

## **What sorts of cases are particularly suitable to send there?**

If local enforcement is expected, then there's a definite advantage to using CRCICA. Egyptian courts respect it. CRCICA's rules also have some useful elements if one is worried about what might be called local "worst practice" by the opponent's arbitrator.

## **What sorts of worst practice?**

Article 12.3 anticipates a common problem: the arbitrator who is bent on delaying the process. The centre can reject a proposed appointee for a "past failure to comply with duties", among other things (ie, a bad track record).

There is also article 13. This allows the centre to remove an arbitrator who is failing to act or has become incapacitated. Both rules require at least one oral hearing to be held following any such substitution.

## **What are the rules like?**

The centre has always been proud of its rules. The 2011 set were a near perfect transposition of the UNCITRAL rules into Arabic, it proudly said.

The new rules, released in early 2024, remain at heart the UNCITRAL set, but with elements added that have become standard practice elsewhere - along with some bespoke rules inspired by CRCICA's lived experience.

CRCICA has created a [document](#) showing how the two sets compare.

## **What are the key changes in the new rules?**

They accommodate a much more digital process throughout - from filings to hearings.

They also require disclosure of third party funding (and who the funder is); give the tribunal greater power to dismiss cases without legal merit; and introduce joinder, consolidation, and emergency arbitration, none of which are included in the UNCITRAL rules as yet.

On top of that, inspired by their locale, they give the tribunal the power to hear disputes arising from more than one contract (provided they all tie back to the same fundamental transaction), which can be quite important, CRICA says, "in the business climate of the Middle East".

The rules also go a certain way towards making more use of sole arbitrators. Article 7.2 gives CRCICA the power to move a case to a sole arbitrator on request. It does however require a request; CRICA can't impose a sole arbitrator of its own volition (in contrast to many of the other major institutions now).

Asked why the update hadn't gone further on sole arbitrators, a source said Middle Eastern users aren't ready for that step. They value the power to appoint too much.

The rules also preserve the powers, in article 12.3 and 13, mentioned above to decline certain appointments and replace arbitrators who are failing to perform.

In a nod to current mores they also instruct CRCICA, when it makes appointments, to "have regard" to "considerations of diversity".

The new rules are available in Arabic, English, and French (with an eye on the north African market).

### **What else is CRCICA working on now?**

A few years ago, the centre stepped up its educational output – both in Cairo and the near abroad – with a particular focus on links in Africa.

It has also recently upgraded its website.

Dr Ismail Selim, the director, is the current president of "IFCAI" [the umbrella body for international arbitral institutions](#).

### **Dubai International Arbitration Centre (DIAC) - promoted to "White List" in 2024**

#### **Why is it being promoted this edition?**

The DIAC was demoted a few years ago, after a long period without anyone in overall charge.

It was still, as we said at the time, a fundamentally a strong institution with consistent case numbers and a hardworking, if long-suffering, staff that few expected would make a serious error.

But it did appear to have some more fundamental issues impeding its overall direction, and complaints were growing. It was without a recognised leader for eight years!

In 2022 and 2023 all that was washed away following the cancellation of its nearest competitor and the gift of all its work to the DIAC by government decree. Those same seismic events have seen the DIAC refashioned. Now it at long last has a registrar (yes : the head of the competitor that was expunged), and looks to be back on track.

### **Why didn't you upgrade it immediately?**

Well, memories are long and the events in question loom large - for some. But more importantly, Dubai at times can be a whimsical place, so against that backdrop we opted for caution. We said we would give everything a year to confirm it bedded in.

It seems to have - so now it is going back up to Whitelist status.

### **Have things there always been so up and down?**

A bit. The DIAC traces its roots to 1994. Up to around the early 2000s Dubai's population had little faith in the local courts, and the DIAC became an essential facility. It had plenty of work, of all shapes and sizes –from everyday landlord–tenant fights up to big international disputes.

After the financial crisis, things boomed again. It had 500+ new case requests in one year, as the bottom fell out of local property markets. The powers that be recruited Nassib Ziadé, formerly of the ICSID, at the World Bank (now of the BCDR in Bahrain) to steer things. Under his auspices, it enjoyed a purple patch - until 2013 when Ziadé unexpectedly resigned.

The DIAC was then without a director – for nearly 10 years - during which a competitor – the DIFC-LCIA – established itself in Dubai's new financial free-zone, while the DIAC's caseload significantly declined.

### **What's its caseload like?**

The DIAC's caseload dwarfs every other institution in the region, and always has (which is an extra reason why it needs to appear well-run).

It can have around 650 cases in progress at any one time (that's the figure for 2023). Even during its 'slump' it would receive 200 new requests a year.

Since its relaunch and the absorption of the DIFC-LCIA work, things have been on the up. It had 340 and 355 new cases in 2022 and 2023 respectively, its best figures in a while.

At the time of its cancellation the DIFC-LCIA was receiving 80 or so requests per year (and had 180 cases on the go in all). So those are part of the reason. But DIAC's stock does seem high again in its catchment area. The bulk of 2023's new requests

came from contracts signed in the past six years (25 per cent more recent than that - from contracts signed after 2021).

### **What kinds of cases go there?**

The work is heavily construction and real estate focused. In 2023, they accounted for 60 per cent of all requests. Banking and finance was the next closest (on 10 per cent). There's usually a nexus to Dubai itself or the region.

### **What's arbitration there like?**

The DIAC has new rules as of 2022, with all of the usual conveniences (joinder and consolidation, emergency arbitration etc).

Cases are overseen by a court, created as part of the revamp. Despite - anecdotally - being turned down a lot because of ill-feeling over expropriation of the DIFC-LCIA, the new court comprises 13 well known names. They include Michael Pryles KC and Albert Jan van den Berg (who helped to establish DIAC originally). The court provides administrative oversight, rather than full award review.

The default seat is the DIFC (a change from once upon a time).

The secretariat (post 2023) is a mix of locals and staff recruited because they have international experience either at law firms or other arbitral providers. They include Christoffer Coello Hedberg, formerly of the SCC in Stockholm and Linklaters, as deputy registrar.

The executive director is Jehad Kazim, and registrar Robert Stephen (ex DIFC-LCIA).

### **Is there anything else important to note?**

DIAC's is getting much better at appointing female arbitrators. Forty-seven per cent of the court's appointments in 2023 were women, and the overall percentage across all cases was 31 per cent.

## **Institutions Worth a Closer Look**

**The Abu-Dhabi International Arbitration Centre ("arbitrateAD") - *previously known as the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC)***

### **That's a lot of names in a short space of time - what's going on?**

ADCCAC was for many years the monopoly provider in Abu Dhabi, part of the local chamber of commerce.

A year ago it was re-launched as "the Abu-Dhabi International Arbitration Centre," with more modern rules and a new, international team as secretariat. And

"ArbitrateAD" is its brand name. Rather than allow a brand name to develop - "LCIA", "ICC" and so on - the centre decided they'd pick their own.

### **So is it the same centre - or different?**

er ... both? In regulatory terms, ArbitrateAD is taking the spot previously occupied by ADCCAC: the arbitration bit of the local chamber of commerce. In that sense they're one entity.

"Arbitral institutions update their rules all the time. We've just happened to update the brand name and the whole team at the same time," says one person with direct knowledge of the plan.

Operationally, however, they couldn't be more different. ADCCAC worked in Arabic from dated premises using a largely locally qualified staff. ArbitrateAD has modern rules, a secretariat with international experience and works in English.

### **Why was the change necessary?**

ADCCAC hadn't been doing well for a number of years. Anecdotally, the Abu Dhabi state-owned companies who managed to get ADCCAC clauses into international contracts had gravitated away from it (to the ICC - which is now present in Abu Dhabi's free-zone the ADGM).

There were also more and more stories circulating about its incompetence (some quite funny: for example at the end of one case, the secretariat is said to have paid the parties not the arbitrators, by mistake!).

It was getting to the point where, as this guide put it last year "one can't really say ADCCAC is a safe pair of hands". So, something had to be done.

### **How has the relaunch gone?**

According to plan, we think. The new team is in place and at the time of press had 28 cases. It's led by Kristin Campbell-Wilson, formerly secretary general of the SCC in Stockholm, as executive director, backed by two legal counsel with international experience, and more to come as required. It is currently interviewing for a registrar.

### **Where have those 28 cases come from?**

Most are from ADCCAC clauses. Others refer to "arbitration at the Abu Dhabi Chamber of Commerce", "or the institution in existence at the time".

### **How is the transition intended to work on cases?**

Since the 31 of January 2024 there have been two teams. The "old" team manages all pending cases. The "new" team, under Campbell-Wilson, everything else.

New cases are heard under the arbitrateAD rules. Except for pending matters on 31 January 2024, the ADCCAC rules no longer exist.

As soon as the last ADCCAC case completes, the old team will disband.

### **What are the rules like?**

The arbitrateAD rules have been described as solid rather than innovative. But even that is an upgrade. The ADCCAC rules lacked almost everything one now takes for granted - provisions on joinder, consolidation, emergency and expedited arbitration etc etc. The new rules bring those in.

They also introduce full scrutiny in the style of the ICC-court, making arbitrateAD the only middle eastern provider to look at substance as well as form.

The working language and seat have also changed. The working language is now English and the default seat the ADGM.

### **Are there any remaining unknowns?**

Local firms are waiting to see who gets appointed as arbitrator by the new team and more specifically whether they will have sufficient expertise in local law. "When you don't have locally-qualified lawyers in the secretariat or on the court, you tend to get more international names appointed, who then don't have a lot of local law expertise, But local law has tended to be quite important on the kinds of cases that go to the ADCCAC and that will presumably now go to arbitrateAD", say one local name.

There's also a bit of a question over enforcement - though the powers that be think it will prove a non-issue.

### **What's the question-mark over enforcement?**

After Dubai redirected all DIFC-LCIA arbitrations to the DIAC, a US court refused to enforce an award because it had been heard at the wrong institution.

There's a risk that the same thing could now happen in Abu Dhabi.

A source at arbitrateAD says "Dubai was dealing with different legal entities, but ADCCAC and arbitrateAD are part of the same legal entity, which has the right to re-organise internally if it so wishes"

"It's really not that controversial. It's re-organising and updating," they add.

But others think a point exists for anyone who wants to take it. One lawyer says "I don't think you can see this as simply a rules change because ADCCAC continues to exist. The two institutions are operating at the same time."

"I don't think you'll have a problem enforcing in Abu Dhabi, but enforcing abroad - you might".

So, at some point, the question will almost certainly be asked.

## **Casablanca International Mediation and Arbitration Centre (CIMAC)**

### **What is it and why did you add it to Worth a Closer Look in 2023?**

CIMAC is the arbitral institution for Casablanca Finance City (CFC), a financial free zone governed by common law, created by the government of Morocco. The CFC was created in 2010; and CIMAC was added in 2016.

The government hopes to establish the CFC as the “gateway to Africa”, and having a dependable disputes system is viewed as part of that.

After GAR took the (overdue) decision to remove one north African institution from this book, we conducted fresh research to see if another one deserved the spot.

The feedback was that CIMAC was now the class of that particular pack, albeit with a few issues.

### **Who runs it?**

CIMAC's secretary general is Hicham Zegrari, who joined Casablanca Finance City Authority as head of legal affairs in 2010 before moving onto the arbitration centre. Zegrari is the chairman of the organising committee of the Casablanca Arbitration Days.

He's supported by Thomas Granier, a former McDermott Will & Emery practitioner who is now counsel at pan-African firm Asafo & Co, as a special adviser.

There's an oversight body – the court of arbitration – with a number of international names on it.

### **Who is on the court?**

It's led by Laurent Lévy, the renowned Swiss arbitrator, as president. Jalal “Jil” El Ahdab of Bird & Bird and Jacob Grierson, whom Granier followed from McDermott to Asafo & Co, are vice presidents.

Members include Mohamed S Abdel Wahab, Dorothy Ufot SAN and Ina Popova, of Debevoise & Plimpton.

### **Has it had any cases yet?**

It has, but not very many. As of March 2022, the centre was administering two arbitrations, one with an international party.

## **What are the issues you alluded to earlier?**

There are murmurings that CIMAC is too international and insufficiently rooted in its region. It's presenting itself, as one person put it, as an "elitist place for foreign investors only".

As part of their evidence, these critics point to the composition of the court. Rather than seeing a surprisingly international-looking body, they note there are 10 European or American court members and only six from the MENA region.

This particular assessment seems a bit unfair. The court looks about 50-50 these days.

Still, all centres do need local buy-in. CIMAC will face a few headwinds if parts of its ecosystem feel excluded.

## **Common Court of Justice and Arbitration (CCJA)**

### **Why's it Worth a Closer Look?**

The CCJA is the supreme court for all disputes under OHADA law. It's also, however, an arbitral institution for arbitrations under the CCJA rules.

As well as confirming and appointing arbitrators and administering those cases it also acts as the supervisory court for arbitrations conducted under its banner.

### **What's it like?**

It's a hybrid between a supreme court and an arbitration centre. The "court" part consists of 13 judges selected by the OHADA council of ministers, for seven-year terms (non-renewable). The judges are organised into three chambers.

The arbitration centre consists of the court plus a – small – secretariat. They were both established in 1998 and made their first decisions in 2001.

So it's not the ICC, but it's also no start-up.

### **Any pitfalls?**

The arbitration centre shares the same space as the OHADA court, so arbitral tribunals have to work around the OHADA court's schedule. Tribunals often choose to sit away from Abidjan for that reason.

It's also a very francophone organisation – and not always comfortable working in English. Staff are reported to be a bit unresponsive – possibly because there are too few. But the issue that's caught most headlines over the years is fees.

### **What's the issue with fees?**

First, the CCJA's official arbitrator rates are phenomenally low for the type of work required. Its fee scale hasn't changed in 16 years.

Because of that, some arbitrators had started to develop workarounds. That led the "Getma affair", where the CCJA set aside an award because the tribunal had negotiated a side deal with the parties for more pay (the arbitrators described the official pay for the case – €60,000 – as tantamount to "charity").

### **Is OHADA aware of the problem?**

It is, and the Getma decision has had an effect. In the aftermath, OHADA commissioned an audit by PwC, which led to two disciplinary proceedings. As part of that Marcel Sérékoisse-Samba, president of the court, was suspended. He admitted to poor record keeping but denied actual dishonesty. His suspension was eventually lifted and he completed his term.

### **Are there any other quirks?**

It's more than a quirk, actually. The CCJA is both the arbitral body and the court of the seat. Thus, it can play a role both at the outset - setting up a case (hearing challenges to arbitrators, fixing fees etc) – and the end (hearing complaints about due process or other sacraments of arbitration). In between, it may review the award for technical strength (similarly to the ICC).

It's a strange amalgam and looks a lot at first blush as if the court judges itself.

The CCJA is aware of this criticism. It takes steps to ensure different judges handle the various stages. Nevertheless, it remains an atypical approach and may come as a shock.

### **What sort of cases are most suitable to go there?**

It's particularly useful for any dispute that may turn on OHADA law – the suite of business laws adopted by 17 west and central African countries, with the aim of harmonising commercial law locally. The CCJA is a creature of the OHADA system. A number of OHADA states now write CCJA clauses into their commercial contracts. Thus, CCJA arbitration is often in effect "imposed".

### **What are the rules like?**

The current rules are from 2018. They fixed a number of problems that had emerged in the earlier version – particularly around the nationality of judges allowed to deal with a particular arbitration (no one from the same nation as the parties), and impartiality of the arbitrators. They also gave arbitrators expanded powers to consolidate and suspend proceedings.

### **Any pitfalls?**

As the Getma case showed, there are various ways that OHADA member states can influence the composition of the court (much as the EU member states do over the bench for European courts). Despite the organisation's efforts, at times the court may still seem insufficiently independent.

### **Are there any advantages?**

Several states that haven't signed the New York Convention have signed the OHADA convention.

## **Kigali International Arbitration Centre (KIAC)**

### **Why's it Worth a Closer Look?**

Rwanda is seeking to establish itself as business hub for East Africa. The KIAC is its capital's arbitration institution. Launched in 2012 it got off to a fast start and has now administered more than 200 cases, of which around 40 per cent were in some for international.

### **What's its caseload like?**

The KIAC enjoyed good numbers for a "baby" institution, from the very start. It had an impressive 24 cases in its first three years.

It now averages 25 to 30 new cases a year (as of 2017).

### **What's driving that?**

It's done an excellent job of promoting itself, and arbitration locally. The government now writes the KIAC into its contracts. There's a good chance if you are dealing with a state entity there it will be suggested.

It's also managed to pull in cases from the near abroad. African businesses that are wary of going to Europe are willing to consider Kigali instead.

It's achieved that in part through time spent capacity-building. In 2020 for example it helped launch a Rwandan chapter of the CI Arb. And it's prominent at all of the African arbitration conferences and associations that are at long last emerging.

### **How international is the work?**

Around 40 per cent of the work features one sides that's non-Rwandan. In its life, its handled cases featuring parties from 20+ countries. It's even had one matter where both sides were Chinese.

### **Is it independent of the government?**

Yes, it's a private institution. Although the government endorses it (strongly), nobody has flagged any concerns about its independence. And the government's lost plenty of cases there.

### **Any pitfalls?**

It has had a change of funding. The grants it benefited from in its first few years have expired but it can't replace them with higher case fees because, well, it needs to keep arbitration affordable. So it's now charging for peripherals – events, training, inclusion in its list of arbitrators. None of this should be begrudged.

There's also uncertainty about what would happen if the government failed to comply with a KIAC award. So far it always has. But if didn't, would the courts enforce? This isn't something within the KIAC's gift. It's pertinent solely because it would affect demand.

## **Mauritius International Arbitration Centre (MIAC)**

### **What is it?**

MIAC is relaunched version of the LCIA-MIAC, now independent and backed by the government.

### **What happened to the LCIA-MIAC?**

We don't entirely know. It closed its doors in late 2017, shortly after the government unexpectedly changed. It's thought the two developments are linked.

But the desire to make Mauritius an arbitral hub endured – leading to the launch of MIAC. All LCIA-MIAC clauses now redirect there.

### **Who are the names to know?**

Its advisory board was once led by prominent French practitioner Emmanuel Gaillard (sadly deceased).

Today Lucy Reed, Gabrielle Kaufmann-Kohler, Mohamed Abdel Wahab and Toby Landau KC are among the members.

Clémence Assou, who is also a counsel at the PCA, is registrar.

### **Does MIAC have its own rules?**

Yes, they're from 2018 and are essentially UNCITRAL.

### **Is it busy?**

The LCIA-MIAC, before it was replaced, had heard one case and had two more in the pipeline, we understand.

MIAC hasn't released any case numbers since. It did though in 2020 announce it was holding its first hearing at its hearing facilities in Port Louis. So there is clearly work taking place. A lot of Asian investment into Africa is routed through Mauritius.

### **What's Mauritius like as a seat?**

It has a modern – and innovative – arbitration law. For instance, it expressly considers treaty arbitration (few others do). And, unusually for a common law seat it includes “the negative effect of competence-competence” (no court shall touch an arbitration matter until an arbitrator has ruled).

Usefully, it also requires local courts to give arbitration matters priority scheduling (very good for interim measures request) and to make more parts of cases private. Finally, all arbitration cases go to standing panel of the same six judges – so that expertise and consistency develops on the part of the courts.

### **Is the PCA also part of the setup?**

Yes. It's the backstop to most of the Mauritius system. The law makes it, not local courts, the default appointing authority – a very international move. MIAC's rules refer numerous questions to the secretary general of the PCA. Hence the registrar is also a counsel at the PCA.

## **Qatar International Centre for Conciliation and Arbitration (QICCA)**

### **What is it?**

QICCA is Qatar's 'regional' arbitration provider.

It's been around since 2006, though remains a little off the beaten path for many specialists in the region.

Its identity was for a long time bound up with the well-respected Egyptian lawyer and academic, Minas Khatchadourian (1958–2021), who was secretary general. His arrival was seen as a coup, when announced.

### **Why is it Worth a Closer Look?**

A lot of government entities in Qatar insist on QICCA clauses, so the general view is that there's potential for a lot of QICCA work.

It doesn't have many cases and reviews are to say the least mixed. One source who's had several first-hand experiences with the centre describes it as “very impressive”.

Others have found it, at times, the opposite - slightly lamentable. One international arbitrator quipped it should be renamed “slower” - after telling a story about some farcical exchanges he had with its secretariat in the run up to an appointment. In

QICCA's defence, it was effectively leaderless for many years, as Khatchadouria's health declined. But, at long last, there's some good news there.

## **What's happened?**

It has a [new secretary general and chief legal counsel](#).

The secretary general is Ibrahim Shahbik, and the chief legal counsel Khaled Mohamed. They're both Qataris.

Shahbik has been with QICCA since 2015, and deputy secretary general since 2016.

Mohamed returns after a year in private practice. He was chief legal counsel in the immediate aftermath of Khatchadourian's death, from 2021 to 2022.

## **Is it busy?**

It's hard to tell as it hasn't been great at putting out statistics. It's become a little better - releasing some for 2023. But they lack the number of new filings.

According to [those](#), in 2023 the centre had cases worth US\$800 million underway. How many cases that was or when they arrived, isn't given.

As for what types of case they are according to the same statistics 70 per cent of its cases are in English, the rest in Arabic, and 60 per cent are construction-related. Around half the arbitrators are Qatari and half are "other".

Doha as a seat is definitely busy. Qatari parties have emerged as major users of the ICC with a lot of those cases heard seated there (Doha is often in the ICC's top 10 seats list).

## **Is QICCA doing anything to grow its appeal beyond Qatar?**

Khatchadourian, before he died, was a professor and a respected regional arbitrator. He did much to promote it. He was regular at regional events and did much to make QICCA more palatable to outsiders, such as expanding its roster of arbitrators to include more internationals.

With the arrival of Shahbik there are signs outreach is improving. The website is being much more maintained, and there are regular conferences in Doha bringing names from the wider region.

## **What is Qatar like as a seat?**

It's improved a lot – if from a low starting point. It didn't have a separate arbitration law until 2017, and before that lower courts would often produce arbitration-unfriendly decisions (usually reversed on appeal).

During that era, one award was set aside because it failed to say it was “made in the name of Emir Sheikh Tamim bin Hamad Al Thani (the ruler)”. This is a requirement for the decisions of courts. Strictly speaking it isn’t applicable to arbitration awards.

More recently, arbitrators have been sentenced to prison terms for deciding they had jurisdiction over a case.

The law of 2017 has cut down the courts’ ability to interfere, but some scope remains.

### **Is it non-profit?**

It’s non-profit and part of the Qatar Chamber of Commerce and Industry.

### **Can I appoint whoever I want as arbitrator?**

You can, but in practice, you’ll probably need an arbitrator who knows the relevant laws of the Gulf Cooperation Council simply because of the contracts that tend to be at stake. To assist, the centre maintains a list of around 150 individuals. It’s “indicative only”.

### **Will I be able to appoint an international arbitrator, if I want?**

This can depend. The rate of pay is pretty low and according to one source “some arbitrators are not prepared to accept appointments because of the low fees and poor admin”.

Those who do accept appointments will probably want to think carefully about it. “Not only are the fees small but arbitrators also have to get the secretariat to get the parties to agree to cover their transport and hotels” according to one arbitrator who sits there from time to time. “and then they then won’t pay out a single fil [the smallest unit of local currency] until after the award has been delivered. No interim payments. So cashflow is an issue.”

So there's room for improvement, in the eyes of non-Qatari names.

But for a big enough case: you might well be able to interest an international name who regularly sits in the Gulf.

(Since this piece went to press a QICCA representative has been in touch to emphasize the secretariat does its utmost to say "yes" to all requests for advances on fees - and hasn't denied one "during the last 12 months". But he acknowledged the rules don't provide for advances on fees.)

### **How big is the secretariat?**

Three case managers and a full-time secretary, who can work in English and Arabic.

## **Aside from problems with the local courts, are there any downsides?**

Qatar has a rule that arbitrators must be physically present for all hearings and other “acts of authority”. This includes signing every page of the award in the kingdom.

There are also some quirks in the rules. The default position is that arbitrators should decide ex aequo et bono unless parties agree otherwise.

In the old days, too, all correspondence had to be on paper until after the tribunal is constituted (and then email is only allowed if all parties agree), which was tiresome. That seems to be changing. The centre recently announced you can now [file a case](#) on-line, and that full digital case-management will arrive soon.

Finally, under the current rules, it can also be hard to get an extension on your time to file a response.

QICCA’s aware of these complaints and has said it will draft new rules. It look as if, at long last, those might finally be about to arrive: it's been promising them for a long while!

When they do arrive, they’re expected to be based on the UNCITRAL set.

## **The Saudi Center for Commercial Arbitration (SCCA) – new for this edition**

### **Why’s it Worth a Closer look?**

It’s a newish institution, with many good people, that “would not totally screw up an arbitration” as one forthright but representative source observed.

International parties and arbitrators haven’t had a lot of exposure to it – yet. But that will change, as it has a lot of government backing (moral rather than financial), and is being written into many contracts with state-owned companies.

It currently looks like the best candidate on this part of the list to be elevated reasonably soon to the Whitelist part.

### **How new is it?**

It was set up in 2014, by ministerial decree, as a non profit organisation. It was given a mission to be “the preferred ADR choice in the region by 2030”.

### **Is it busy?**

Moderately - but moderate is excellent in the context of its youth. It hasn't released statistics for either 2022 or 2021 but had 82 new cases in 2020, and 14 the year before. (We estimate it has probably had around 50 cases a year in each of the past two years).

## **How international are those cases?**

Not very, as yet. If you ask international types if what their experience of the SCCA has been, they tend to say "I haven't yet had one" .

Historically, it's heard mostly domestic disputes, in Arabic, before Saudi arbitrators.

But that is expected to change.

In 2020 eight of the 82 cases had one foreign side.

## **What is arbitration there like?**

You'll definitely recognise it.

There's a secretariat and a court, with 15 impressive names. They include Jan Paulsson, Larry Shore, James Hosking, Alec Emmerson and and Jennifer Kirby. There's also a well-connected advisory board (to steer direction of travel, not assist on cases).

The rules are modern with all the usual bells and whistles. Helpful esoteric elements include: the power for the tribunals to put page limits on written submissions (article 27) and the ability to challenge an arbitrator for "failure to perform" "manifest lack of party-agreed qualification" (article 18).

Reports on the secretariat, however, have been a bit mixed. Some have found the case-handlers excellent. "As professional and competent as the ICC and LCIA," said one.

Others echo the experience of the person who said "it's more or less like arbitrating at the DIAC in terms of rules, and slightly better than ADCCAC in terms of case management."

When we last conducted took the temperature on the secretariat (towards the end of 2023) several people told us it was clear many of the staff lacked experienced. Even on quite simple points, case-handlers would check with a superior, on relatively simple decisions - as if doing something for the first time.

The secretariat's decisions on time limits were particularly singled out as "unpredictable".

## **How has it got cases so fast fast?**

The caseload is impressive (if not quite as impressive as we initially thought: early reports suggested 200+ new cases a year). The government has had a lot to do with that. First, it's made it very clear it blesses the centre.

Second, it's removed various obstacles to going there (the need to seek permission for arbitration that otherwise applies, if you are a state-connected entity) and made it the default in many of its own contracts.

As a result of both, many mega-project owners now include SCCA clauses as standard in all their contracts. With hundreds of contractors per project, it all adds up fast.

And Saudi Arabia is all mega projects right now. The money flowing there is described as extraordinary.

It's also putting a lot of energy into awareness raising, and highlighting how Saudi Arabia has improved as seat. You can read more [here](#). Those steps include Riyadh International Disputes Week, which drew 4,500 visitors in 2024.

### **Can I appoint whoever I like?**

In theory, yes. But to date, not many non Saudi arbitrators have sat there.

But that's a function of the caseload, which is expected to change (rapidly) given the clauses that are now out there.

Foreigners who have sat there (that GAR knows of) include Georges Affaki, Mohamed Abdel Wahab and Ahmed Ibrahim.

Under Saudi law, you do now have full party autonomy. Under the older law, all arbitrators had to be male and Muslim.

There's still one residual limitation. Sole arbitrators and tribunal chairs are required to hold a law degree, a fact not everybody likes.

### **Who are the names to know?**

The SCCA is credited with having hired "some good people". Most obviously, Hamed Merha, the CEO, and Christian Alberti, general counsel and head of ADR.

Alberti is more hands-on on cases – akin to a deputy secretary general – with Merha acting more as secretary general. Alberti works from both Riyadh and Dubai; Merha mostly from Saudi. Alberti is a dual qualified German lawyer who spent 13 years at the ICDR in New York; Merha is Saudi trained and well regarded locally.

They're seen as a strong duo and a big part of why the SCCA is seen as having such energy.

"They're both really good!" was a regular comment.

### **Are there any pitfalls for the unwary?**

It's not a pitfall as such but the information on fees given to arbitrators could be clearer. Several report being left uncertain what they'd actually be paid. But the rates look as if they might be at the same level as the ICC.

The forms inviting arbitrators to act are also described as "unusual". They include several question about tax residency and double taxation treaties. Similarly the document on disclosures is repetitive and overlong.

The SCCA will soon need larger hearing rooms, if all the expected work materialises. One person with direct experience of its space in Riyadh said: "In Riyadh I believe there's only one large hearing room. The others were fairly small and way too small to handle the kinds of arbitrations we will expect to see coming out of [Saudi Arabia]."

It's also worth remembering: the new version of Saudi arbitration law, while regarded as much more pro-arbitration, is largely untested. So "you just don't know what you'll get", says one source.

### **Can foreign counsel appear in the kingdom, and can women sit as arbitrators?**

Yes under the new law foreign counsel can work and women can sit. And courts endorsed the second recently. It's about the only aspect of the new law to be tested.

### **Is there anything else to know?**

In early 2023, the SCCA opened an office in the DIFC, in Dubai.