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A DEFINITIVE COMMENTARY ON THE 2021 ICC RULES OF ARBITRATION

**THROUGH THE JURISPRUDENCE OF THE UNITED ARAB
EMIRATES COURTS**



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The 2021 ICC Rules of Arbitration comprise 43 articles. While there is a rich library of UAE case law on arbitration matters, the judgments cited in this commentary are those where the courts have explicitly interpreted a particular article of the ICC Rules (2021 or prior versions) or where a specific article was central to party submissions.

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Dubai Court of Cassation, Case No. 935/2024 (29 October 2024)

Article 3: Written Notifications or Communications and Time Limits

Dubai Court of Cassation, Case No. 384/2016 (19 June 2016)

Article 6: Effect of the Arbitration Agreement

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Article 22: Conduct of the Arbitration

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Dubai Court of Cassation, Case No. 846/2024 (12 November 2024)

Article 23: Terms of Reference

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Dubai Court of Cassation, Case No. 384/2016 (19 June 2016)

Dubai Court of Cassation, Case No. 767/2016 (26 February 2017)

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ARTICLE 1

INTERNATIONAL COURT OF ARBITRATION

1) The International Court of Arbitration (the “Court”) of the International Chamber of Commerce (ICC) is the independent arbitration body of ICC. The statutes of the Court are set forth in Appendix I.

2) The Court does not itself resolve disputes. It administers the resolution of disputes by arbitral tribunals, in accordance with the Rules of Arbitration of ICC (the “Rules”). The Court is the only body authorized to administer arbitrations under the Rules, including the scrutiny and approval of awards rendered in accordance with the Rules. It draws up its own internal rules, which are set forth in Appendix II (the “Internal Rules”).

3) The President of the Court (the “President”) or, in the President’s absence or otherwise at the President’s request, one of the Vice-Presidents of the Court shall have the power to take urgent decisions on behalf of the Court, provided that any such decision is reported to the Court at its next session.

4) As provided in the Internal Rules, the Court may delegate to one or more committees composed of its members the power to take certain decisions, provided that any such decision is reported to the Court at its next session.

5) The Court is assisted in its work by the Secretariat of the Court (the “Secretariat”) under the direction of its Secretary General (the “Secretary General”).

Commentary

The jurisprudence of the United Arab Emirates courts has, over time, developed a clear and consistent recognition of the unique and exclusive role of the ICC International Court of Arbitration. The judicial interpretation of Article 1 of the Rules has solidified the principle that an agreement to ICC arbitration is not merely a selection of a procedural framework, but a submission to the comprehensive administrative authority of the ICC Court. This understanding has evolved from foundational appellate rulings to definitive pronouncements from the highest courts, creating a robust pro-arbitration stance that respects and enforces the institutional architecture chosen by commercial parties.

The analysis begins with an early, yet pivotal, judgment that laid the groundwork for this judicial deference. In **Dubai Court of Appeal, Case No. 368/2011 (judgment dated 14 March 2012)**, the court was confronted with a scenario that tested the very nature of an ICC arbitration clause. Although this decision was rendered under the 1998 ICC Rules, its reasoning remains fundamentally relevant to the current 2021 Rules. The dispute originated from a contract stipulating that conflicts “shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce”. When a dispute arose, one of the parties attempted to bypass the ICC’s institutional mechanisms by applying directly to the Dubai courts for the appointment of an arbitrator. The Court of First Instance acceded to this request, but the Court of Appeal reversed the decision, establishing a critical precedent.

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The appellate court's analysis was anchored in the comprehensive and self-contained character of the ICC system. It held that the parties' agreement to arbitrate under the ICC Rules was an indivisible package, constituting an acceptance of both the procedural rules and the administrative body responsible for their implementation. The court's declaration that, "by agreeing to arbitrate in accordance with the Rules, the parties accept that the International Court of Arbitration shall administer the arbitration," was a clear affirmation of the principle now explicitly codified in Article 1(2) of the 2021 Rules. This provision unequivocally states that the ICC Court "is the only body authorized to administer arbitrations under the Rules". The 2012 judgment thus established that the selection of ICC arbitration is a conscious submission to the institutional authority of the ICC Court, precluding national courts from intervening in core administrative functions such as the appointment of arbitrators. This early ruling correctly identified that the parties' choice was not for ad-hoc arbitration with ICC procedural guidance, but for a fully administered institutional process.

This foundational principle received its most powerful and definitive endorsement more than a decade later from the highest court in the Emirate. In **Dubai Court of Cassation, Case No. 935/2024 (judgment dated 29 October 2024)**, the court provided an unequivocal confirmation of the ICC Court's exclusive administrative authority. The facts mirrored those of the 2012 case, but the Court of Cassation's ruling carried the ultimate judicial weight. A party to an ICC arbitration agreement had again sidestepped the institution and applied directly to the Dubai Court of Appeal, which erroneously appointed an arbitrator from a different local institution.

The Court of Cassation nullified this appointment, grounding its decision in a direct and meticulous interpretation of the ICC Rules. The judgment explicitly referenced and analysed Article 1, reinforcing the distinction between the ICC Court's administrative role and the adjudicative function of an arbitral tribunal. The court found that the text of the Rules makes it plain that the ICC Court is the sole "authorized body to administer arbitrations under the Rules." It recognised that the parties, in choosing the ICC, contractually submitted to this exclusive administrative regime. The court's reasoning cemented the understanding that the institutional framework of the ICC is not an optional extra but a core component of the parties' bargain. This landmark ruling confirms that the role of the ICC Court, as defined in Article 1, is a cornerstone of the ICC system that will be given its full contractual effect by the UAE judiciary. Consequently, national courts are precluded from intervening in matters, such as the constitution of the tribunal, that are textually and contractually committed to the institution.

Together, these judgments trace a clear jurisprudential arc. What began as a correct and robust interpretation at the appellate level has now been solidified as a fundamental principle by the Court of Cassation. The UAE courts understand that the administrative oversight of the ICC Court is a key feature that provides integrity, certainty, and predictability to the arbitral process. Their consistent refusal to permit parties to circumvent this authority demonstrates a sophisticated and mature understanding of international arbitration and a firm commitment to upholding the contractual choices made by commercial parties.

ARTICLE 3

WRITTEN NOTIFICATIONS OR COMMUNICATIONS AND TIME LIMITS

1) Save as otherwise provided in Articles 4(4)(b) and 5(3), all pleadings and other written communications submitted by any party, as well as all documents annexed thereto, shall be sent to each party, each arbitrator, and the Secretariat. Any notification or communication from the arbitral tribunal to the parties shall also be sent in copy to the Secretariat.

2) All notifications or communications from the Secretariat and the arbitral tribunal shall be made to the last address of the party or its representative for whom the same are intended, as notified either by the party in question or by any other party. Such notification or communication may be made by delivery against receipt, registered post, courier, email, or any other means of telecommunication that provides a record of the sending thereof.

3) A notification or communication shall be deemed to have been made on the day it was received by the party itself or by its representative, or would have been received if made in accordance with Article 3(2).

4) Periods of time specified in or fixed under the Rules shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with Article 3(3). When the day next following such date is an official holiday, or a non-business day in the country where the notification or communication is deemed to have been made, the period of time shall commence on the first following business day. Official holidays and non-business days are included in the calculation of the period of time. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication is deemed to have been made, the period of time shall expire at the end of the first following business day.

Commentary

While the procedural mechanics of notification and communication may appear to be routine administrative matters, the jurisprudence of the UAE courts indicates that strict adherence to these protocols is essential to safeguarding the finality and enforceability of an award. The provisions of Article 3, which ensure that the ICC Secretariat is kept fully informed of the proceedings, are not mere formalities. A failure to comply can be framed as a significant procedural defect by a party seeking to resist enforcement.

The judgment in **Dubai Court of Cassation, Case No. 384/2016 (dated 19 June 2016)** provides a salient illustration of this risk. The case concerned the enforcement of an award rendered in 2015 under the 2012 ICC Rules, whose provisions on this matter are materially identical to those in the current Article 3. The party resisting enforcement raised a direct challenge based on an alleged violation of the communication protocol. The judgment meticulously records the specific ground of challenge advanced by the award debtor: "The arbitrator's violation of Article 3 of the prevailing ICC Rules of Arbitration, as the arbitrator did not indicate that the Secretariat had received any copies or that he had sent it a copy of any notice or correspondence addressed by the arbitral tribunal to the parties..."

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The Court of Cassation did not ultimately rule on the merits of this particular argument, as its decision to quash the lower court's judgment and remit the case for a new hearing was based on the failure to apply the 1958 New York Convention. However, the court's decision to document this specific challenge is highly instructive for practitioners. It demonstrates that procedural arguments grounded in Article 3 are considered sufficiently serious to be raised and considered at the highest judicial level in the UAE.

The case serves as a critical warning. The requirement in Article 3(1) to copy the Secretariat on all communications is a cornerstone of the ICC's administrative oversight. This ensures that the institution can effectively monitor the progress of the arbitration, manage time limits, and carry out its supervisory functions, including the ultimate scrutiny of the award. An arbitral tribunal's failure to meticulously adhere to this requirement may be seized upon by a recalcitrant party at the enforcement stage. Such a failure could be characterized as a departure from the agreed-upon arbitral procedure, potentially forming the basis for a challenge under Article V(1)(d) of the New York Convention. The judgment in Case No. 384/2016 highlights that, in the context of UAE enforcement proceedings, procedural diligence is paramount. Ensuring that the Secretariat is copied on every piece of correspondence is not a matter of administrative convenience but a crucial step in insulating the final award from subsequent judicial attack.

ARTICLE 6

EFFECT OF THE ARBITRATION AGREEMENT

1) Where the parties have agreed to submit to arbitration under the Rules, they shall be deemed to have submitted ipso facto to the Rules in effect on the date of commencement of the arbitration, unless they have agreed to submit to the Rules in effect on the date of their arbitration agreement.

2) By agreeing to arbitration under the Rules, the parties have accepted that the arbitration shall be administered by the Court.

3) If any party against which a claim has been made does not submit an Answer, or if any party raises one or more pleas concerning the existence, validity or scope of the arbitration agreement or concerning whether all of the claims made in the arbitration may be determined together in a single arbitration, the arbitration shall proceed and any question of jurisdiction or of whether the claims may be determined together in that arbitration shall be decided directly by the arbitral tribunal, unless the Secretary General refers the matter to the Court for its decision pursuant to Article 6(4).

4) In all cases referred to the Court under Article 6(3), the Court shall decide whether and to what extent the arbitration shall proceed. The arbitration shall proceed if and to the extent that the Court is prima facie satisfied that an arbitration agreement under the Rules may exist. In particular: (i) where there are more than two parties to the arbitration, the arbitration shall proceed between those of the parties, including any additional parties joined pursuant to Article 7(1), with respect to which the Court is prima facie satisfied that an arbitration agreement under the Rules that binds them all may exist; and (ii) where claims pursuant to Article 9 are made under more than one arbitration agreement, the arbitration shall proceed as to those claims with respect to which the Court is prima facie satisfied (a) that the arbitration agreements under which those claims are made may be compatible, and (b) that all parties to the arbitration may have agreed that those claims can be determined together in a single arbitration. The Court's decision pursuant to Article 6(4) is without prejudice to the admissibility or merits of any party's plea or pleas.

5) In all matters decided by the Court under Article 6(4), any decision as to the jurisdiction of the arbitral tribunal, except as to parties or claims with respect to which the Court decides that the arbitration cannot proceed, shall then be taken by the arbitral tribunal itself.

6) Where the parties are notified of the Court's decision pursuant to Article 6(4) that the arbitration cannot proceed in respect of some or all of them, any party retains the right to ask any court having jurisdiction whether or not, and in respect of which of them, there is a binding arbitration agreement.

7) Where the Court has decided pursuant to Article 6(4) that the arbitration cannot proceed in respect of any of the claims, such decision shall not prevent a party from reintroducing the same claim at a later date in other proceedings.

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8) If any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration shall proceed notwithstanding such refusal or failure.

9) Unless otherwise agreed, the arbitral tribunal shall not cease to have jurisdiction by reason of any allegation that the contract is non-existent or null and void, provided that the arbitral tribunal upholds the validity of the arbitration agreement. The arbitral tribunal shall continue to have jurisdiction to determine the parties' respective rights and to decide their claims and pleas even though the contract itself may be non-existent or null and void.

Commentary

The effect of an arbitration agreement is the bedrock upon which the entire arbitral process is built. The UAE courts have developed a sophisticated and nuanced body of jurisprudence concerning the application of Article 6 of the ICC Rules. This jurisprudence traces a clear path, beginning with the fundamental requirement for a clear and unequivocal agreement to arbitrate, progressing to a mature distinction between matters of jurisdiction and admissibility, and culminating in a robust enforcement of the principles of *kompetenz-kompetenz* and party submission to the institutional framework.

The starting point for any analysis is the validity of the arbitration agreement itself. The judgment in **Dubai Court of Cassation, Case No. 342/2022 (dated 31 August 2022)**, provides a critical authority on the standard of clarity required to oust the jurisdiction of the national courts. The case concerned a dispute resolution clause in a construction contract which stated: "The appointment of the DAB shall be by the President of the International Chamber of Commerce." The lower appellate court had interpreted this as a valid agreement to arbitrate. The Court of Cassation, however, reversed this decision, finding the clause to be fatally ambiguous.

The court's reasoning was grounded in the foundational principle that arbitration is an exception to the general jurisdiction of state courts and therefore requires a clear, unequivocal, and written expression of the parties' common intention to arbitrate. The court found that the reference to a "DAB" (Dispute Adjudication Board) was not synonymous with arbitration. It correctly identified a DAB as a distinct, often non-binding or provisionally binding, dispute resolution mechanism common in the construction industry, designed to provide swift resolutions to keep projects moving. The mere fact that the ICC President was designated as the appointing authority for this board did not transform the clause into an agreement for final and binding ICC arbitration. The court's definitive finding was that the clause "does not clearly indicate the intention of the two parties to exclude the jurisdiction of the courts." This judgment serves as a significant warning against the dangers of pathological or poorly drafted clauses. It confirms that for an arbitration agreement to be upheld in the UAE, it must contain a clear expression of intent to resolve disputes through arbitration under the institution's rules, not merely an administrative reference to the institution or its officers.

Once a valid arbitration agreement is established, the focus shifts to the procedural conduct of the arbitration. A significant development in UAE jurisprudence has been the clear adoption of the distinction between matters of jurisdiction and admissibility, particularly in the context of multi-tiered dispute resolution clauses. The judgment in **Dubai Court of Appeal, Case No. 22/2023 (dated 14 December 2023)**, provides an important clarification on this issue. In an action to annul an ICC award, the claimant argued that the arbitration was invalid because the

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opposing party had failed to comply with a pre-arbitral negotiation period stipulated in the contract.

The Court of Appeal rejected this argument, relying on established Court of Cassation precedent to distinguish between jurisdiction and admissibility. It reasoned that a failure to comply with a pre-arbitration procedural step does not deprive the arbitral tribunal of its fundamental jurisdiction to hear the dispute. Rather, it raises a question of the claims' admissibility—that is, whether they are procedurally ripe for determination. The court articulated the rationale clearly: "the non-fulfillment of any of the pre-conditions to arbitration does not restore the authority to decide the dispute to the state courts, but rather, at most, postpones the hearing of the case through arbitration." As such, the court held that the question of compliance was a matter of admissibility that fell squarely within the discretionary authority of the arbitral tribunal. The national court's role in reviewing the tribunal's decision on such a matter is highly limited. This ruling underscores that UAE courts will not permit parties to re-litigate procedural issues of admissibility that have been properly raised and decided by the arbitral tribunal.

The principle that an agreement to the ICC Rules constitutes an *ipso facto* submission to the entirety of the Rules, as stated in Article 6(1), was given powerful effect by the **Dubai Court of Cassation in Case No. 935/2024 (judgment dated 29 October 2024)**. In this case, the court held that a party's agreement to the ICC Rules was a binding acceptance of all the procedural mechanisms contained therein, including the exclusive authority of the ICC Court to appoint the arbitral tribunal under Article 12. The court explicitly referenced Article 6(1), interpreting it to mean that the parties' agreement was not to a generic concept of arbitration, but to a specific, integrated system administered by the ICC. This ruling establishes that the effect of Article 6 is to make the entire set of Rules a non-severable part of the parties' arbitration agreement, preventing a party from cherry-picking which provisions it wishes to follow.

The distinction between jurisdiction and admissibility was authoritatively confirmed at the highest judicial level in **Dubai Court of Cassation, Case No. 846/2024 (judgment dated 12 November 2024)**. In another annulment action concerning non-compliance with a pre-arbitration mediation period, the Court of Cassation delivered a definitive affirmation of the principle. It reiterated that such pre-conditions are matters of admissibility for the tribunal to decide, not matters of jurisdiction for the court to review. The court's reasoning provides a clear analytical framework: "pre-conditions to arbitration... are not considered matters related to the jurisdiction of the arbitral tribunal... but rather are matters related to whether the substantive claims... can be heard at that time... which are questions of admissibility." This ruling solidifies the deferential approach of the UAE courts, confirming that they will not permit a party to re-frame an admissibility objection as a jurisdictional challenge in an annulment action.

Finally, the jurisprudence from Abu Dhabi's highest court provides a powerful affirmation of the *kompetenz-kompetenz* principle enshrined in Article 6(2). In **Abu Dhabi Court of Cassation, Case No. 878/2024 (judgment dated 14 November 2024)**, a party attempted to invalidate an arbitration clause before the Abu Dhabi courts by arguing that the signatory lacked the requisite authority. This action was brought after an ICC tribunal, seated in Paris, had already been constituted, had ruled on this exact jurisdictional challenge, and had issued a final award that was subsequently upheld by the French courts.

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The Abu Dhabi Court of Cassation firmly rejected this collateral attack. It held, first, that by agreeing to the ICC Rules, the parties had contractually granted the arbitral tribunal the power to decide on its own jurisdiction, referencing the substance of Article 6(2). Second, and crucially, it held that the tribunal's decision on this matter, having been rendered and confirmed by the supervisory courts at the seat of arbitration, now possessed the force of *res judicata*. The court found that the issue was the very same matter that had been "in dispute, presented to arbitration, between the same parties, and was contested until the arbitral tribunal issued its final and binding award." As such, the prior decisions were conclusive and could not be re-opened before the UAE courts. This judgment confirms that the UAE courts will robustly uphold the *kompetenz-kompetenz* principle and will give preclusive effect to a tribunal's jurisdictional findings that have been affirmed by the courts of the arbitral seat, thereby preventing parties from re-litigating jurisdiction during local enforcement proceedings.

ARTICLE 11

GENERAL PROVISIONS

- 1) Every arbitrator must be and remain impartial and independent of the parties involved in the arbitration.
- 2) Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.
- 3) An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature to those referred to in Article 11(2) concerning the arbitrator's impartiality or independence which may arise during the arbitration.
- 4) The decisions of the Court as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.
- 5) By accepting to serve, arbitrators undertake to carry out their responsibilities in accordance with the Rules.
- 6) Insofar as the parties have not provided otherwise, the arbitral tribunal shall be constituted in accordance with the provisions of Articles 12 and 13.
- 7) In order to assist prospective arbitrators and arbitrators in complying with their duties under Articles 11(2) and 11(3), each party must promptly inform the Secretariat, the arbitral tribunal and the other parties, of the existence and identity of any non-party which has entered into an arrangement for the funding of claims or defences and under which it has an economic interest in the outcome of the arbitration.

Commentary

The integrity of the arbitral process is critically dependent on the impartiality and independence of the arbitrators. The UAE courts have developed a clear and pragmatic jurisprudence around the application of Article 11, focusing on two central themes: the doctrine of waiver, which places a duty on parties to raise challenges promptly, and the finality of the ICC's internal challenge mechanisms, which provides a cure for procedural defects. This body of case law demonstrates a judicial approach that respects the institutional framework for ensuring arbitrator integrity while preventing parties from using belated or resolved challenges as a tactical tool to undermine an award.

The principle of waiver was central to the decision in **Dubai Court of Appeal, Case No. 17/2023 (judgment dated 5 October 2023)**. This case provides essential guidance on how a UAE court will assess an arbitrator's duty of disclosure at the annulment stage. An application was made to

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set aside an ICC award based on the sole arbitrator's alleged failure to disclose a conflict of interest. The conflict purportedly arose from the arbitrator's position as a partner at a law firm that had advised the opposing party on a separate matter. The applicant argued this omission from the arbitrator's signed statement of independence constituted a fatal flaw in the proceedings.

The Court of Appeal firmly rejected this challenge, not on the substance of the alleged conflict, but on the applicant's conduct. The court found that the applicant had been aware of the arbitrator's professional affiliation and the law firm's relationship with the respondent for several years, as early as 2017 and 2018. Despite this knowledge, the applicant proceeded with the arbitration without objection, participating fully in every stage. It was only after receiving an unfavourable award that the issue of impartiality was raised. The court's decision establishes that a party's right to object is not absolute and can be forfeited. By failing to act on its knowledge in a timely manner, the applicant was deemed to have waived its right to challenge the arbitrator on that basis. This ruling effectively imports the doctrine of waiver into the assessment of such challenges, preventing a party from strategically withholding an objection to be deployed as an "ace in the hole" after the fact. The judgment serves as a stark warning: allegations concerning an arbitrator's independence must be raised promptly upon discovery, or the right to object will be extinguished.

Building on this, the judgment in **Dubai Court of Appeal, Case No. 22/2023 (dated 14 December 2023)** illustrates the practical effect and finality of the ICC's internal challenge mechanism. In this annulment action, the claimant resurrected an argument concerning a conflict of interest on the part of the original tribunal chairman.

The Court of Appeal found the argument to be without merit, precisely because the ICC's institutional process had already been engaged and had provided a remedy. The court noted from the procedural record that the claimant had, in fact, raised this same objection during the arbitration. Upon the challenge being made, the arbitrator in question resigned, and the ICC Court promptly appointed a replacement. The Court of Appeal held that this process entirely cured the alleged procedural defect, rendering the subsequent challenge before the court moot. The court reasoned that since the arbitrator was challenged and replaced in accordance with the ICC's institutional rules, the ground for objection had been remedied before the final award was rendered. The potential for prejudice was removed. Therefore, the claimant's attempt to use the same resolved issue as a ground for annulling the final award was misplaced.

Considered together, these two judgments from late 2023 provide a clear and coherent picture of the UAE courts' approach. The ruling in *Case No. 17* establishes that a party must use the challenge mechanism or lose its right to object. The ruling in *Case No. 22* establishes that once the mechanism is used and a remedy is provided (i.e., the arbitrator is replaced), the issue is considered definitively resolved. This jurisprudence confirms that the internal challenge procedures of the ICC are the primary and proper forum for resolving issues of arbitrator impartiality. The UAE courts will respect the integrity of this process by enforcing a duty of timeliness on the parties and by recognizing the finality of the solutions it provides, thereby safeguarding the stability and enforceability of the final award.

ARTICLE 12

CONSTITUTION OF THE ARBITRAL TRIBUNAL

Number of Arbitrators

- 1) The disputes shall be decided by a sole arbitrator or by three arbitrators.
- 2) Where the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators. In such case, the claimant shall nominate an arbitrator within 15 days from receipt of the notification of the decision of the Court, and the respondent shall nominate an arbitrator within 15 days from receipt of the notification of the nomination made by the claimant. If a party fails to nominate an arbitrator, the appointment shall be made by the Court.\

Sole Arbitrator

- 3) Where the parties have agreed that the dispute shall be resolved by a sole arbitrator, they may, by agreement, nominate the sole arbitrator for confirmation. If the parties fail to nominate a sole arbitrator within 30 days from the date when the claimant's Request for Arbitration has been received by the other party or parties, or within such additional time as may be allowed by the Secretariat, the sole arbitrator shall be appointed by the Court.

Three Arbitrators

- 4) Where the parties have agreed that the dispute shall be resolved by three arbitrators, each party shall nominate in the Request and the Answer, respectively, one arbitrator for confirmation. If a party fails to nominate an arbitrator, the appointment shall be made by the Court.
- 5) Where the dispute is to be referred to three arbitrators, the third arbitrator, who will act as president of the arbitral tribunal, shall be appointed by the Court, unless the parties have agreed upon another procedure for such appointment, in which case the nomination will be subject to confirmation pursuant to Article 13. Should such procedure not result in a nomination within 30 days from the confirmation or appointment of the co-arbitrators or any other time limit agreed by the parties or fixed by the Court, the third arbitrator shall be appointed by the Court.
- 6) Where there are multiple claimants or multiple respondents, and where the dispute is to be referred to three arbitrators, the multiple claimants, jointly, and the multiple respondents, jointly, shall nominate an arbitrator for confirmation pursuant to Article 13.
- 7) Where an additional party has been joined, (Article 7(1)), and where the dispute is to be referred to three arbitrators, the additional party may, jointly with the claimant(s) or with the respondent(s), nominate an arbitrator for confirmation pursuant to Article 13 and subject to Article 7(5).
- 8) In the absence of a joint nomination pursuant to Articles 12(6) or 12(7) and where all parties are unable to agree to a method for the constitution of the arbitral tribunal, the Court may appoint each member of the arbitral tribunal and shall designate one of them to act as president. In such

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cases, the Court shall be at liberty to choose any person it regards as suitable to act as arbitrator, applying Article 13 when it considers this appropriate.

9) Notwithstanding any agreement by the parties on the method of constitution of the arbitral tribunal, in exceptional circumstances the Court may appoint each member of the arbitral tribunal to avoid a significant risk of unequal treatment and unfairness that may affect the validity of the award.

Commentary

The process for constituting the arbitral tribunal is a cornerstone of institutional arbitration, and the jurisprudence of the UAE courts demonstrates an unwavering respect for the exclusive authority granted to the ICC Court under Article 12. A clear and consistent line of authority has developed over more than a decade, confirming that the appointment of arbitrators under the ICC Rules is a matter reserved for the institution, to the exclusion of the national courts. This judicial deference extends from upholding the basic principle of institutional appointment to enforcing the Rules' more nuanced mechanisms for curing defective clauses and overcoming the non-cooperation of a party.

The foundational principle was established in **Dubai Court of Appeal, Case No. 368/2011 (judgment dated 14 March 2012)**. This early ruling determined that an agreement to the ICC Rules is a binding commitment to the ICC's specific institutional mechanisms, including those for appointing arbitrators. The court found that the Rules were "complete and integrated," providing a comprehensive system that begins with the "appointment and confirmation of the arbitrator." Its conclusion was unequivocal: where parties have chosen the ICC Rules, "it is forbidden for them to resort to this court [the Dubai Court] to appoint the arbitrator or arbitrators." This judgment laid the essential groundwork, establishing that the parties' contractual choice of institution divests the national courts of their default powers of appointment.

Building on this foundation, the UAE courts have shown a willingness to use the ICC Rules as a curative tool to uphold imperfectly drafted arbitration clauses. In **Abu Dhabi Court of Cassation, Case No. 471/2014 (judgment dated 18 September 2014)**, the court was faced with a 'pathological' clause that ambiguously specified resolution "by two or three arbitrators." Rather than declaring the clause void for uncertainty, the court held that the parties' reference to the ICC Rules was sufficient to save it. It reasoned that by incorporating the Rules, the parties had also incorporated the default mechanisms designed to resolve such ambiguities. The court correctly identified that the Rules (specifically, the precursor to the current Article 12(2)) empower the ICC Court to decide on the number of arbitrators where the parties have failed to do so. This judgment is of high precedential value, confirming that the UAE's highest court in Abu Dhabi will give full effect to the gap-filling provisions of Article 12, thereby promoting the *effet utile* of arbitration agreements.

The exclusivity of the ICC's appointment mechanism was reinforced with even greater precision in **Dubai Court of Appeal, Case No. 2640/2018 (judgment dated 26 June 2019)**. In this case, the court clarified the narrow circumstances under which a national court may intervene. It held that recourse to the courts for an appointment is permissible only where the arbitration agreement is entirely "silent on the mechanism for appointment." An agreement to arbitrate

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under the ICC Rules, the court found, is the opposite of silent; it is an explicit choice of a detailed and comprehensive appointment mechanism. The court's definitive statement that "it is not permissible to depart from it and resort to the court" confirms that the procedural framework of Article 12 is binding and ousts the jurisdiction of the national courts.

While the institutional rules are paramount, the courts also respect the principle of party autonomy to amend those rules. The judgment in **Abu Dhabi Court of Cassation, Case No. 1051/2020 (judgment dated 4 January 2021)**, demonstrates this balance. The original contract stipulated a three-member tribunal, but the parties subsequently agreed to proceed with a sole arbitrator. The Court of Cassation rejected an annulment challenge based on this deviation, finding that the parties' later agreement, clearly evidenced in communications with the ICC Secretariat, validly superseded the original clause. This underscores the dynamic nature of party autonomy and the willingness of UAE courts to give effect to the parties' latest expressed intentions regarding the constitution of their tribunal.

More recently, the courts have solidified the principle that an agreement to the ICC framework binds parties to its procedural safeguards, particularly those designed to address non-cooperation. In **Dubai Court of Cassation, Case No. 61/2024 (judgment dated 26 August 2024)**, a party challenged an award on the basis that the ICC Court had appointed a co-arbitrator on its behalf without its consent. The court dismissed this argument, holding that the ICC Court's action was a direct and proper application of the powers granted to it under Article 12 to make an appointment when a party fails to nominate. This ruling confirms that a party cannot agree to the Rules and then object when those same Rules are applied to prevent its own default from derailing the arbitral process.

This entire line of jurisprudence reached its definitive apex in the landmark judgment of the **Dubai Court of Cassation, Case No. 935/2024 (judgment dated 29 October 2024)**. In overturning a lower court's erroneous appointment of an arbitrator, the highest court conducted a detailed analysis of Article 12, declaring it to be a "complete and self-sufficient code for the constitution of the arbitral tribunal." The court established a clear hierarchy: the institutional mechanism chosen by the parties must be exhausted first. It stated that a party cannot "ignore what is stated in the rules... and strip the jurisdiction regarding the appointment of arbitrators from it." The role of the national court was defined as purely "subsidiary and exceptional," arising only if the designated institution fails to perform its function. This ruling sends an unequivocal message that the procedural autonomy of the ICC in constituting the tribunal will be rigorously upheld in the UAE.

ARTICLE 13

APPOINTMENT AND CONFIRMATION OF THE ARBITRATORS

1) In confirming or appointing arbitrators, the Court shall consider the prospective arbitrator's nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals and the prospective arbitrator's availability and ability to conduct the arbitration in accordance with the Rules. The same shall apply where the Secretary General confirms arbitrators pursuant to Article 13(2).

2) The Secretary General may confirm as co-arbitrators, sole arbitrators and presidents of arbitral tribunals persons nominated by the parties or pursuant to their particular agreements, provided that the statement they have submitted contains no qualification regarding impartiality or independence or that a qualified statement regarding impartiality or independence has not given rise to objections. Such confirmation shall be reported to the Court at one of its next sessions. If the Secretary General considers that a co-arbitrator, sole arbitrator or president of an arbitral tribunal should not be confirmed, the matter shall be submitted to the Court.

3) Where the Court is to appoint an arbitrator, it shall make the appointment upon proposal of an ICC National Committee or Group that it considers to be appropriate. If the Court does not accept the proposal made, or if the National Committee or Group fails to make the proposal requested within the time limit fixed by the Court, the Court may repeat its request, request a proposal from another National Committee or Group that it considers to be appropriate, or appoint directly any person whom it regards as suitable.

4) The Court may also appoint directly to act as arbitrator any person whom it regards as suitable where:

a) one or more of the parties is a state or may be considered to be a state entity; b) the Court considers that it would be appropriate to appoint an arbitrator from a country or territory where there is no National Committee or Group; or c) the President certifies to the Court that circumstances exist which, in the President's opinion, make a direct appointment necessary and appropriate.

5) Where the Court is to appoint the sole arbitrator or the president of the arbitral tribunal, such sole arbitrator or president of the arbitral tribunal shall be of a nationality other than those of the parties. However, in suitable circumstances and provided that none of the parties objects within the time limit fixed by the Secretariat, the sole arbitrator or the president of the arbitral tribunal may be chosen from a country of which any of the parties is a national.

6) Whenever the arbitration agreement upon which the arbitration is based arises from a treaty, and unless the parties agree otherwise, no arbitrator shall have the same nationality of any party to the arbitration.

Commentary

The detailed mechanics of appointment and confirmation set out in Article 13 are a critical part of the ICC's administrative mandate, designed to ensure the quality, suitability, and integrity of

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the arbitral tribunal. The UAE courts, in line with their broader deference to the ICC's institutional role, have consistently treated these procedures as an exclusive and binding component of the parties' arbitration agreement. The jurisprudence affirms that the entire process—from nomination and confirmation to the ICC Court's default appointment power—is reserved for the institution and is not a matter for intervention by national courts.

The early judgment in **Dubai Court of Appeal, Case No. 368/2011 (judgment dated 14 March 2012)**, while not engaging with the specific details of Article 13, established the foundational principle upon which later interpretations are built. By finding that the local courts lacked jurisdiction to appoint an arbitrator, the judgment implicitly affirmed that the entire procedural sequence for seating a tribunal, including the steps of confirmation and appointment, was an exclusive function of the ICC Court. The court's specific reference to the ICC Court's role in the "appointment and confirmation" of arbitrators demonstrates an early judicial understanding that this is a rules-based, institution-led process that the parties have contractually chosen to adopt. This reasoning supports the proposition that all matters falling within the scope of the modern Article 13 are beyond the purview of the UAE courts.

This principle was applied directly and with great clarity in **Dubai Court of Appeal, Case No. 22/2023 (judgment dated 14 December 2023)**. In an annulment action, a party challenged the constitution of the tribunal on the grounds that the ICC Court had appointed an arbitrator on its behalf, allegedly contrary to the agreement. The Court of Appeal swiftly dismissed this argument. It held that by agreeing to the ICC Rules, the parties had incorporated the entirety of the Rules' procedural framework into their contract. The court's reasoning was anchored in a direct application of Article 13. It found that this article provides a clear, default mechanism empowering the ICC Court to appoint an arbitrator on behalf of a party that fails to make its own nomination.

The court stated that since the parties had agreed that the ICC Rules would "govern the procedures of the arbitration case," and since "Article (13) of the said rules has delineated the method of appointing arbitrators," the appointment made by the ICC Court was not a violation of the parties' agreement but was, in fact, a direct and proper application of it. This judgment provides a powerful affirmation of institutional autonomy. It confirms that when parties agree to arbitration under the ICC Rules, they are bound by the subsidiary powers granted to the institution, which are designed to ensure the arbitral process can proceed even in the face of a party's non-cooperation. The decision makes clear that the default appointment powers detailed in Article 13 will be given their full force and effect by the UAE courts, preventing a party's failure to nominate from frustrating the constitution of the tribunal.

ARTICLE 14

CHALLENGE OF ARBITRATORS

1) A challenge of an arbitrator, whether for an alleged lack of impartiality or independence, or otherwise, shall be made by the submission to the Secretariat of a written statement specifying the facts and circumstances on which the challenge is based.

2) For a challenge to be admissible, it must be submitted by a party either within 30 days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within 30 days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.

3) The Court shall decide on the admissibility and, at the same time, if necessary, on the merits of a challenge after the Secretariat has afforded an opportunity for the arbitrator concerned, the other party or parties and any other members of the arbitral tribunal to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

Commentary

The procedure for challenging an arbitrator is a matter of profound importance for the integrity of the arbitral process. The UAE courts have developed a clear, consistent, and robust line of jurisprudence that unequivocally upholds the exclusivity of the challenge mechanism provided in Article 14 of the ICC Rules. This body of case law establishes that the national courts have no jurisdiction to hear challenges to arbitrators during the course of an ICC arbitration. Furthermore, it has solidified the principle that a party's failure to use the prescribed institutional mechanism in a timely manner constitutes a waiver of the right to object, and that once the mechanism has been used and has provided a remedy, the issue is considered definitively resolved.

The foundational principle of exclusivity was established in two near-contemporaneous Court of Appeal judgments in 2019. In **Dubai Court of Appeal, Commercial Appeal No. 1655/2018 (judgment dated 24 April 2019)**, a party, dissatisfied with a procedural decision, sought the removal of the tribunal president by initiating proceedings directly before the Dubai courts. The Court of Appeal affirmed the lower court's finding that it lacked jurisdiction. It held that by agreeing to the ICC Rules, the parties had contractually bound themselves to the self-contained and mandatory procedure set out in Articles 14 and 15 for the challenge and replacement of arbitrators. The court's finding was clear: "the jurisdiction of the Court is removed."

This position was reiterated and reinforced just two months later in **Dubai Court of Appeal, Case No. 2640/2018 (judgment dated 26 June 2019)**. Faced with a similar attempt to have the court remove an arbitrator, the Court of Appeal again held that the judiciary lacked jurisdiction. It explicitly referenced Article 14, finding that the institutional rules provide a "specific and mandatory path" for a party wishing to challenge an arbitrator, and this path must be followed to the exclusion of any recourse to the national courts. The court adopted the reasoning of the Court of First Instance, which stated that the existence of the ICC's internal challenge procedure

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"divests the court of jurisdiction to hear the claimant's application." These two judgments, read together, provide a powerful statement of judicial deference, confirming that parties who select the ICC Rules cannot circumvent the institution's internal challenge procedures by seeking a parallel remedy in the national courts. The written challenge to the ICC Secretariat, to be decided by the ICC Court, is the sole and exclusive remedy available during the proceedings.

The UAE courts have also aligned their application of domestic law with the principles of timeliness and waiver inherent in Article 14. In **Dubai Court of Appeal, Case No. 17/2023 (judgment dated 5 October 2023)**, the court, in an annulment action, considered a challenge to an arbitrator based on an alleged conflict of interest. While the primary finding was that the applicant had waived its right to object by failing to raise a timely challenge despite having prior knowledge, the court's reasoning provides a powerful municipal law analogue to the requirements of Article 14(2). The court referenced the UAE Arbitration Law, which prescribes a strict 15-day time limit for challenges. It found that the applicant's failure to act within this period under the *lex arbitri* meant it had renounced its right to object. This judicial approach is in perfect harmony with the purpose of ICC Rule 14(2), which sets a 30-day limit. The ruling demonstrates that the UAE judiciary will rigorously enforce such time limits, whether they arise from the institutional rules or the governing national law, thereby preventing parties from strategically delaying challenges for tactical advantage.

The mandatory nature of the Article 14 procedure and the conclusive effect of failing to use it were definitively confirmed by Dubai's highest court in **Dubai Court of Cassation, Case No. 1548/2023 (judgment dated 18 January 2024)**. In this annulment action, the applicant alleged, for the first time, a lack of impartiality on the part of the sole arbitrator. The Court of Cassation rejected this challenge, not on its merits, but on the applicant's profound procedural failure. It held that a party with knowledge of a potential ground for challenge *must* adhere strictly to the procedure detailed in Article 14. Its failure to do so was fatal. The court stated unequivocally: "if the prescribed deadline for submitting the request is missed, the right to object is forfeited." This ruling from the highest court establishes that the internal challenge mechanism is a mandatory prerequisite to raising such objections before the courts. A party cannot remain silent during the proceedings only to deploy the objection as a ground for annulment upon receiving an unfavourable award. Failure to submit a written challenge to the Secretariat within the 30-day time limit constitutes a definitive waiver.

Finally, the conclusive effect of the ICC's challenge mechanism, once it has been properly invoked, was confirmed in **Dubai Court of Cassation, Case No. 61/2024 (judgment dated 26 August 2024)**. In another annulment action, the claimant re-argued an issue of conflict of interest that had already been raised before the ICC Court during the arbitration. In response to that initial challenge, the chairman had resigned and had been replaced by the ICC. The Court of Cassation held that this sequence of events fully resolved the issue, rendering any subsequent attempt to annul the final award on the same grounds impermissible. The court found that the ground for challenge had become "moot." This landmark ruling establishes that the internal procedures of Article 14 constitute the sole and exclusive remedy. Where a party uses this mechanism and the challenge is resolved by the ICC Court, the matter is considered closed. The UAE courts will not permit a party a "second bite of the apple" by re-litigating the same objection in a subsequent annulment action, thereby providing powerful support for the finality of the ICC's institutional decisions.

ARTICLE 15

REPLACEMENT OF ARBITRATORS

1) An arbitrator shall be replaced upon death, upon acceptance by the Court of the arbitrator's resignation, upon acceptance by the Court of a challenge, or upon acceptance by the Court of a request of all the parties.

2) An arbitrator shall also be replaced on the Court's own initiative when it decides that the arbitrator is prevented de jure or de facto from fulfilling the arbitrator's functions, or that the arbitrator is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.

3) When, on the basis of information that has come to its attention, the Court considers applying Article 15(2), it shall decide on the matter after the arbitrator concerned, the parties and any other members of the arbitral tribunal have had an opportunity to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

4) When an arbitrator is to be replaced, the Court has discretion to decide whether or not to follow the original nominating process. Once reconstituted, and after having invited the parties to comment, the arbitral tribunal shall determine if and to what extent prior proceedings shall be repeated before the reconstituted arbitral tribunal.

5) Subsequent to the closing of the proceedings, instead of replacing an arbitrator who has died or been removed by the Court pursuant to Articles 15(1) or 15(2), the Court may decide, when it considers it appropriate, that the remaining arbitrators shall continue the arbitration. In making such determination, the Court shall take into account the views of the remaining arbitrators and of the parties and such other matters that it considers appropriate in the circumstances.

Commentary

The procedure for replacing an arbitrator, governed by Article 15, is an integral part of the ICC's comprehensive administrative framework, ensuring the continuity and integrity of the arbitral process when a vacancy arises on the tribunal. The UAE courts have interpreted this article in a manner consistent with their approach to appointment and challenge, holding that the replacement of arbitrators is a matter exclusively reserved for the ICC's own mechanisms.

The core principle was established in the tandem judgments from the Dubai Court of Appeal in 2019. In **Dubai Court of Appeal, Commercial Appeal No. 1655/2018 (judgment dated 24 April 2019)**, the party applying to the court sought not only the removal of the tribunal president but also the appointment of a replacement. The court treated the issues of challenge and replacement as an indivisible whole, governed exclusively by the ICC Rules. By specifically referencing both Articles 14 and 15, the court made clear that its lack of jurisdiction extended to both the primary request for removal and the ancillary request to appoint a replacement. This confirms that the power to appoint a successor is a direct consequence of the ICC Court's exclusive authority over the challenge process itself.

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This reasoning was affirmed in **Dubai Court of Appeal, Case No. 2640/2018 (judgment dated 26 June 2019)**. In this case, the claimant in the domestic proceedings had also requested, as an alternative remedy, that the court appoint a replacement arbitrator. The Court of Appeal upheld the lower court's refusal to do so, treating the issue of replacement as inseparable from the primary matters of appointment and challenge. The court's endorsement of the lower court's reasoning, which explicitly referenced Articles 14 and 15, makes it plain that the comprehensive scheme for replacement now found in Article 15 of the 2021 Rules ousts the jurisdiction of the national courts. The judgment was emphatic, noting that the court's finding of no jurisdiction applied "both with respect to the request to remove and challenge the arbitrator... and the request to appoint an alternative arbitrator." These judgments establish that the entire lifecycle of an arbitrator's mandate—from appointment through potential challenge to replacement—is governed by the institutional rules. Parties cannot seek to have a national court step into the process to appoint a replacement; the proper and only forum for such matters is the ICC Court.

The substantive effect of a replacement was addressed by the highest court in **Dubai Court of Cassation, Case No. 61/2024 (judgment dated 26 August 2024)**. While the primary focus of this judgment was the challenge mechanism under Article 14, its finding has direct implications for Article 15. The court's core determination was that the replacement of a challenged arbitrator by the ICC Court definitively *cures* the alleged procedural defect. By accepting the original chairman's resignation and appointing a new one, the ICC Court, acting under its powers which culminate in the replacement procedure of Article 15, rendered the initial objection moot. This judgment underscores that the replacement of an arbitrator is not merely an administrative step but is a substantive remedy. It purges the proceedings of the alleged taint that gave rise to the need for replacement. As a result, a party cannot later use the original grounds for the challenge to attack the final award. The remedy has been provided, and the process has been corrected. This confirmation from Dubai's highest court provides significant assurance that the procedural safeguards built into the ICC Rules, including the replacement of arbitrators, are respected and given their full intended legal effect in the UAE.

ARTICLE 18

PLACE OF THE ARBITRATION

- 1) The place of the arbitration shall be fixed by the Court, unless agreed upon by the parties.
- 2) The arbitral tribunal may, after consulting the parties, conduct hearings and meetings at any location it considers appropriate, unless otherwise agreed by the parties.
- 3) The arbitral tribunal may deliberate at any location it considers appropriate.

Commentary

The determination of the place, or legal seat, of the arbitration is a matter of fundamental importance, as it establishes the governing procedural law (*lex arbitri*) and the jurisdiction of the supervisory national courts. The jurisprudence of the UAE courts has evolved to reflect a sophisticated understanding of this concept, drawing a clear distinction between the legal seat and the physical venue of hearings, and addressing the unique jurisdictional questions posed by the UAE's financial free zones.

An early indication of the UAE courts' approach can be found in **Dubai Court of Appeal, Case No. 368/2011 (judgment dated 14 March 2012)**. In this seminal case on institutional autonomy, the court, while not interpreting Article 18 directly, cited the rule on the place of arbitration as another example of the ICC's "complete and integrated" procedural framework. By doing so, the court implicitly endorsed the principle that the authority to determine the seat, in the absence of party agreement, is a core administrative function of the ICC Court, as stipulated in Article 18(1). This early reference supports the view that the mechanism for fixing the seat is an integral part of the parties' bargain, to be respected by the national courts.

The critical distinction between the legal seat and the physical venue for hearings was definitively established by Dubai's highest court in **Dubai Court of Cassation, Case No. 434/2013 (judgment dated 23 November 2014)**. This case concerned the enforcement of an ICC award rendered in an arbitration seated in Stuttgart, Germany. The party resisting enforcement argued that the award was invalid because a hearing had taken place in Paris, France. The Court of Cassation firmly rejected this challenge. It found that the procedural decision to hold a hearing in a different location, which was done with the parties' consent for reasons of logistical convenience, did not alter the legal seat of the arbitration. The court's reasoning that this "does not vitiate the award" provides high precedential value. It confirms that the UAE courts correctly interpret the "place of the arbitration" as a legal construct, consistent with the structure of Article 18, which explicitly separates the concept of the seat (Article 18(1)) from the location of hearings and meetings (Article 18(2)).

The development of financial free zones within the UAE, such as the Abu Dhabi Global Market (ADGM), has introduced a new layer of complexity to the determination of the arbitral seat. The judgment in **Abu Dhabi Court of Appeal, Case No. 9/2022 (judgment dated 2 February 2022)**, provides a significant clarification in this regard. The parties had agreed to ICC arbitration with the "seat of the arbitration in Abu Dhabi." The onshore Abu Dhabi Court of Appeal declined

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jurisdiction, reasoning that because the ICC has a registered presence within the ADGM, the general reference to "Abu Dhabi" should be interpreted as a choice of the ADGM as the legal seat. This ruling establishes a strong, albeit rebuttable, presumption that where the chosen institution has a presence in the ADGM, an otherwise ambiguous reference to the emirate will be construed as a choice of the free zone's distinct common law jurisdiction. This has profound consequences, as it determines that the ADGM Courts will serve as the supervisory authority.

The deference to the ICC's institutional processes was further affirmed in **Dubai Court of Appeal, Case No. 8/2023 (judgment dated 5 June 2023)**. Here, an award debtor argued for annulment on the basis that the ICC, as the administering institution, did not have a physical headquarters in the onshore UAE. The court gave this argument short shrift, holding that by failing to specify a seat, the parties had delegated the determination to the ICC Court in accordance with Article 18(1). The court reasoned that "leaving the matter to the rules of the International Chamber of Commerce" meant the plea was "without basis." This confirms that the physical location of the institution is irrelevant; what matters is the proper application of the agreed-upon rules for determining the legal seat.

Finally, the principle of party autonomy to modify the seat during the proceedings was upheld in **Dubai Court of Appeal, Case No. 12/2024 (judgment dated 27 May 2024)**. The court dismissed a challenge that the proper jurisdiction lay with the ADGM, finding that the parties had, after the arbitration commenced, mutually agreed to change the seat to Dubai. This agreement was formally recorded in the signed Terms of Reference. The court found this to be a conclusive expression of the parties' will, stating that "the two parties agreed that Dubai... would be the place of arbitration in accordance with Article 18(1)." This ruling clarifies that the parties retain the authority to modify the seat, and when such a modification is clearly documented, the UAE courts will uphold that later agreement as definitive.

ARTICLE 21

APPLICABLE RULES OF LAW

1) The parties shall be free to agree upon the rules of law to be applied by the arbitral tribunal to the merits of the dispute. In the absence of any such agreement, the arbitral tribunal shall apply the rules of law which it determines to be appropriate.

2) The arbitral tribunal shall take account of the provisions of the contract, if any, between the parties and of any relevant trade usages.

3) The arbitral tribunal shall assume the powers of an amiable compositeur or decide ex aequo et bono only if the parties have agreed to give it such powers.

Commentary

The power to determine the substantive law applicable to the merits of a dispute is a central function of an international arbitral tribunal. The UAE courts have shown a robust and modern approach to this issue, giving primacy to the principle of party autonomy as enshrined in Article 21(1), while also recognizing the procedural authority granted to tribunals by the ICC Rules. The jurisprudence demonstrates a clear respect for the parties' choice of law and an unwillingness to allow that choice to be undermined by belated challenges or arguments based on extraneous legal systems.

An early, albeit indirect, endorsement of the tribunal's authority in this area is found in **Dubai Court of Appeal, Case No. 368/2011 (judgment dated 14 March 2012)**. In its landmark ruling on the comprehensive nature of the ICC system, the court listed the provision governing the "rules applicable to the procedure"—the precursor to the modern Article 21—as a key element demonstrating the self-sufficiency of the ICC framework. While not interpreting the substance of the rule, the court's inclusion of it in its reasoning signifies that the judiciary views the determination of applicable law as an integral part of the arbitral process, contractually delegated by the parties to the tribunal and the institutional framework. This supports the principle that such procedural matters are to be resolved within the arbitration itself, reinforcing the autonomy and discretion granted to arbitrators under Article 21.

A far more direct and powerful affirmation of party autonomy was delivered in **Dubai Court of Appeal, Case No. 14/2025 (judgment dated 7 August 2025)**. This judgment provides a definitive statement on the enforcement of choice of law clauses. The court was faced with a challenge to a partial award where the applicant argued that the tribunal had incorrectly applied English law to a dispute concerning commercial competition in Saudi Arabia. The applicant contended that such matters were intrinsically linked to Saudi public policy and should be governed by Saudi law, notwithstanding the parties' contractual choice.

The Court of Appeal emphatically rejected this argument. It found a clear and unequivocal agreement to apply English law, evidenced not only in the contract's governing law clause but also in the signed Terms of Reference. Most significantly, the court placed considerable weight on the applicant's own conduct during the arbitration. It observed that the applicant, in its

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Request for Arbitration and subsequent pleadings, had actively founded its legal arguments on English legal principles. The court determined that a party cannot fully participate in proceedings under an agreed legal framework only to challenge that very framework upon receiving an adverse decision. This creates a form of procedural estoppel. The court's conclusion that "the two parties have agreed to apply the provisions of substantive English law" was therefore based on the totality of the evidence, including the parties' own procedural conduct.

The implications of this ruling are of great significance for practice in the UAE. It confirms that the onshore courts will rigorously uphold the choice of law agreed by the parties. An attempt to displace an explicit contractual choice by invoking the public policy of another jurisdiction, particularly where that jurisdiction's connection is merely the place of performance, is highly unlikely to succeed. The judgment establishes that the agreement of the parties on the applicable law, especially when consistently reflected in their conduct, is paramount, providing a high degree of legal certainty for commercial parties choosing a UAE seat for their arbitration.

ARTICLE 22

CONDUCT OF THE ARBITRATION

- 1) The arbitral tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute.
- 2) In order to ensure effective case management, after consulting the parties, the arbitral tribunal shall adopt such procedural measures as it considers appropriate, provided that they are not contrary to any agreement of the parties. Such measures may include one or more of the case management techniques described in Appendix IV.
- 3) Upon the request of any party, the arbitral tribunal may make orders concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.
- 4) In all cases, the arbitral tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.
- 5) The parties undertake to comply with any order made by the arbitral tribunal.

Commentary

Article 22 grants the arbitral tribunal broad discretionary powers to manage the proceedings, subject to the overriding duty to act fairly and to provide each party with a reasonable opportunity to present its case. The UAE courts have shown a marked deference to a tribunal's exercise of these case management powers, consistently rejecting procedural challenges unless a fundamental breach of due process can be proven with concrete evidence. The jurisprudence affirms that the procedural flexibility inherent in the ICC Rules will be upheld, and that the courts will not engage in second-guessing a tribunal's procedural orders.

The importance of a well-documented arbitral record in defending against procedural challenges was highlighted in **Dubai Court of Appeal, Case No. 22/2023 (judgment dated 14 December 2023)**. In an action to set aside an ICC award, the claimant argued that the proceedings were defective because witnesses and experts had not been administered an oath, which it contended was a violation of UAE public policy. The Court of Appeal rejected this argument, not on a point of law, but based on the clear factual evidence in the record. The court found that the tribunal had issued a specific procedural order addressing the form of the oath, and that an extract from the hearing transcript confirmed that the witnesses had, in fact, been sworn in accordingly. The court's finding that the challenge was "without factual basis" demonstrates that the UAE courts will not accept bare allegations of procedural irregularity. A party seeking to annul an award on such grounds bears the burden of substantiating its claim with evidence from the arbitral record. Conversely, a tribunal that maintains a meticulous record of its procedural decisions can effectively insulate its award from such attacks.

The deferential approach of the UAE's highest court to a tribunal's case management discretion was powerfully demonstrated in **Dubai Court of Cassation, Case No. 846/2024 (judgment dated 12 November 2024)**. This judgment provides a robust endorsement of the procedural

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flexibility afforded to tribunals under the ICC Rules. The party seeking annulment alleged bias and a violation of the principle of equality on two grounds: first, that the tribunal, on its own initiative, requested a party to submit additional evidence on damages after the proceedings had closed; and second, that it granted unequal time limits for the parties to make their respective submissions.

The Court of Cassation rejected both arguments by direct reference to the procedural powers granted by the ICC Rules. It held that the tribunal's request for additional evidence was a proper exercise of the explicit powers granted under Articles 25(3) and 27. Regarding the unequal time limits, the court reasoned that the standard set by the ICC Rules in Article 22(4) is a "reasonable opportunity" to be heard, not a strict or mathematical equality in the time allocated to each party. Since the claimant was given an opportunity to respond and did so, the court found that the fundamental requirement of procedural fairness and the right of confrontation had been met. This landmark ruling confirms that the UAE courts will not interfere with a tribunal's case management decisions, including the setting of deadlines and the calling for further evidence, provided those actions are grounded in the powers conferred by the agreed-upon institutional rules and do not fundamentally breach a party's right to present its case.

ARTICLE 23

TERMS OF REFERENCE

1) As soon as it has received the file from the Secretariat, the arbitral tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their most recent submissions, a document defining its Terms of Reference. This document shall include the following particulars: a) the names in full, description, address and other contact details of each of the parties and of any person(s) representing a party in the arbitration; b) the addresses to which notifications and communications arising in the course of the arbitration may be made; c) a summary of the parties' respective claims and of the relief sought by each party, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims; d) unless the arbitral tribunal considers it inappropriate, a list of issues to be determined; e) the names in full, address and other contact details of each of the arbitrators; f) the place of the arbitration; and g) particulars of the applicable procedural rules and, if such is the case, reference to the power conferred upon the arbitral tribunal to act as amiable compositeur or to decide ex aequo et bono.

2) The Terms of Reference shall be signed by the parties and the arbitral tribunal. Within 30 days from the date on which the file has been transmitted to it, the arbitral tribunal shall transmit to the Court the Terms of Reference signed by it and by the parties. The Court may extend this time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.

3) If any of the parties refuses to take part in the drawing up of the Terms of Reference or to sign the same, they shall be submitted to the Court for approval. When the Terms of Reference have been signed in accordance with Article 23(2) or approved by the Court, the arbitration shall proceed.

4) After the Terms of Reference have been signed or approved by the Court, no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances.

Commentary

The Terms of Reference are a unique and defining feature of ICC arbitration, serving as a foundational document that crystallizes the parties' claims and the tribunal's mandate. The UAE courts have recognized the significance of this procedural step and have developed a jurisprudence that respects the ICC's internal mechanisms for its approval, creating a strong presumption of procedural regularity that is difficult for a challenging party to overcome.

An early but highly influential decision on this point came from the **Dubai Court of First Instance in Case No. 681/2012 (judgment dated 9 December 2012)**. In an action to ratify a foreign ICC award, the defendant resisted on the grounds that there was no formal Terms of Reference. The court rejected this challenge by drawing a crucial inference from the ICC Court's final act of supervision. It noted that the final award recorded that the ICC Court had approved the draft

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award. The court treated this scrutiny as dispositive evidence that all mandatory antecedent procedures, including the proper handling of the Terms of Reference, had been correctly followed. The court reasoned that the ICC's approval of the final draft "means that all procedures were under the supervision of that court and their validity was confirmed." This ruling established a powerful principle: the ICC's final scrutiny of an award acts as a holistic certification of the entire arbitral process, creating a strong presumption of regularity that shields the award from challenges based on alleged earlier procedural defects.

The risk for parties who might perceive a defect in the formalization of the Terms of Reference was illustrated in **Dubai Court of Cassation, Case No. 384/2016 (dated 19 June 2016)**. While the court did not rule on the merits of the challenge, it documented the award debtor's argument that the award should not be enforced because "The Terms of Reference were not presented to the Court for approval in accordance with Article 23(1) and (3)." The fact that this argument was raised before the highest court is instructive. It shows that compliance with the procedural requirements of Article 23 is not viewed as a mere formality in the UAE. A failure to secure the ICC Court's approval where a party refuses to sign can be framed as a fundamental flaw, suggesting the tribunal lacked a fully constituted mandate. This case serves as a warning that any deviation from the prescribed procedure may be weaponized in subsequent enforcement proceedings.

This line of reasoning was further developed in **Dubai Court of Cassation, Case No. 767/2016 (judgment dated 26 February 2017)**. In an enforcement action, the award debtor again alleged a procedural breach regarding the Terms of Reference. The Court of Cassation dismissed the challenge, applying the New York Convention and holding that the challenging party had failed to provide any concrete evidence to substantiate its claim. The court effectively held that in the absence of such proof, it would presume procedural regularity. This ruling solidifies the high evidentiary threshold required to successfully challenge an award on such grounds. It confirms that the UAE's highest court will not re-examine an arbitral institution's internal procedures based on unsubstantiated allegations. An ICC award, having passed through the institution's procedural gateways, including the establishment of the Terms of Reference and the final scrutiny of the award, arrives before the UAE courts with a strong presumption of validity that a challenging party will find difficult to rebut.

ARTICLE 27

CLOSING OF THE PROCEEDINGS AND DATE FOR SUBMISSION OF DRAFT AWARDS

As soon as possible after the last hearing concerning matters to be decided in an award or the filing of the last authorized submissions concerning such matters, whichever is later, the arbitral tribunal shall: a) declare the proceedings closed with respect to the matters to be decided in the award; and b) inform the Secretariat and the parties of the date by which it expects to submit its draft award to the Court for approval pursuant to Article 34. After the proceedings are closed, no further submission or argument may be made, or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the arbitral tribunal.

Commentary

Article 27 governs a critical juncture in the arbitral process: the closing of the proceedings. While the declaration of closure signals the end of the evidentiary and argumentation phase, the rule explicitly provides the arbitral tribunal with the discretion to reopen the case. The UAE courts have demonstrated a clear and deferential approach to a tribunal's exercise of this power, viewing it as a legitimate case management tool rather than a procedural irregularity, provided the fundamental tenets of due process are upheld.

The judgment in **Dubai Court of Appeal, Case No. 16/2024 (judgment dated 27 June 2024)**, provides a significant affirmation of a tribunal's discretionary authority under this article. The case involved an application to set aside an ICC award where the applicant argued that the arbitrator had violated the principles of due process and impartiality. The core of the challenge was that the sole arbitrator, after having formally declared the proceedings closed, reopened the case on his own initiative and directed the claimant to submit new evidence on the quantification of damages. The applicant contended that this constituted an improper act of assisting a party's case and was an overreach of the arbitrator's mandate.

The Dubai Court of Appeal rejected this argument in its entirety. The court's reasoning was anchored directly in the procedural powers conferred upon the arbitrator by the ICC Rules. It found that the rules explicitly grant the tribunal the "discretionary power to request new evidence or arguments from the arbitration parties" even after the proceedings have been closed. The court therefore determined that the arbitrator's action was not a departure from his neutral role, but a proper exercise of a specific power. The purpose of this power is to ensure the completeness of the record upon which the award will be based, enabling the tribunal to render a fully reasoned and supportable decision.

Crucially, the court's decision turned on the fact that the principles of procedural fairness had been preserved. It noted that the applicant had been granted a reasonable opportunity to respond to the new evidence, thereby safeguarding its right to be heard and the principle of contradictory debate. The fact that the time limit for the response was shorter than that granted for the initial submission was considered to be within the arbitrator's case management

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discretion and did not rise to the level of a violation of equal treatment sufficient to warrant annulment.

The implication of this ruling is that the UAE courts afford considerable deference to the procedural framework established by the ICC Rules. An arbitrator's decision to reopen proceedings under Article 27, particularly for the purpose of clarifying an essential element of the case such as damages, will be upheld by the supervisory courts. Such an action, when expressly authorized by the parties' chosen rules and conducted in a manner that respects the fundamental right of all parties to present their case, is not considered a violation of UAE public policy.

ARTICLE 31

TIME LIMIT FOR THE FINAL AWARD

1) The time limit within which the arbitral tribunal must render its final award is six months. Such time limit shall start to run from the date of the last signature by the arbitral tribunal or by the parties of the Terms of Reference or, in the case of application of Article 23(3), the date of the notification to the arbitral tribunal by the Secretariat of the approval of the Terms of Reference by the Court. The Court may fix a different time limit based upon the procedural timetable established pursuant to Article 24(2).

2) The Court may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.

Commentary

The management of the arbitral timetable is a core administrative function of the ICC Court. The jurisprudence of the UAE courts on the application of Article 31 has been remarkably consistent and has developed into a settled and definitive legal principle: the ICC Court's authority to extend the time limit for rendering an award is fully respected, and an award issued within a duly extended period is insulated from challenge on the grounds of timeliness. This line of authority, stretching across both Dubai and Abu Dhabi and confirmed at the highest judicial levels, provides absolute certainty on this point.

The seminal judgment that established the foundations of this approach was **Dubai Court of Cassation, Case No. 56/2012 (judgment dated 8 May 2012)**. In an action to annul an ICC award, the challenging party argued that the arbitrator had exceeded the mandatory six-month time limit. The Court of Cassation rejected the challenge based on two powerful, interlocking grounds. First, it held that the extensions granted by the ICC Secretariat on behalf of the Court were a proper exercise of the power vested in the institution by its rules (the precursor to the current Article 31). It found that these extensions created a continuous, valid period for the tribunal to issue its award. Second, the court invoked the principle of waiver, observing that the challenging party had continued to participate actively in the arbitration after the initial time limit had expired, without objection. This conduct was deemed an implicit agreement to the continuation of the proceedings and a waiver of the right to later object. This foundational ruling established both the UAE courts' deference to the ICC's internal time management and the duty of a party to object in a timely manner.

This principle has been consistently applied and reinforced over the subsequent decade. The highest court in Abu Dhabi demonstrated a harmonized, federation-wide position in **Abu Dhabi Court of Cassation, Case No. 1051/2020 (judgment dated 4 January 2021)**. In rejecting a timeliness challenge, the court pointed to the procedural record documented within the award itself, which confirmed that the ICC Court had properly exercised its authority to grant extensions. The judgment explicitly referenced the relevant article of the ICC Rules, concluding that since the award was rendered within the final extended deadline, the challenge had no merit.

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The appellate courts have followed this clear cassation-level precedent without deviation. In **Dubai Court of Appeal, Case No. 2/2023 (judgment/27 April 2023)**, the court dismissed a challenge where the award was issued more than two years after the proceedings commenced. It did so by finding that the extensions were properly sanctioned by the ICC Court under its powers pursuant to Article 31(3), and the award was rendered within the final authorized timeframe. Similarly, in **Dubai Court of Appeal, Case No. 22/2023 (judgment dated 14 December 2023)**, the court held that because the parties had chosen the ICC Rules, the provisions of Article 31 were controlling. It examined the award, noted the series of extensions granted by the ICC Court, and concluded that the challenge was on a "foundationless basis" as the award was issued within the final, validly extended period. This was echoed in **Dubai Court of Appeal, Case No. 7/2024 (judgment dated 18 April 2024)**, where the court again found that the procedural record showed the time limit had been duly extended by the ICC Court in accordance with its rules.

This consistent line of authority culminated in the recent and definitive ruling of the **Dubai Court of Cassation in Case No. 861/2023 (judgment dated 5 February 2024)**. In this case, the highest court provided its final word on the matter. It held that by agreeing to the ICC Rules, the parties also agreed to the procedures contained therein for the extension of time limits. Finding as a matter of fact that the ICC Court had granted the necessary extensions, the court's reasoning was succinct and absolute: the award was issued within the time limit decided by the ICC Court, and therefore the challenge was "without legal basis and must be rejected."

This unbroken chain of jurisprudence, from the foundational 2012 ruling to the definitive 2024 confirmation, establishes with absolute clarity that the UAE courts will not interfere with the ICC Court's administration of the arbitral timetable. The power to extend time limits under Article 31 is treated as an internal procedural matter to which the courts will show complete deference, effectively closing the door on annulment actions based on the duration of an ICC arbitration, provided the award is rendered within a time limit sanctioned by the ICC Court.

ARTICLE 32

MAKING OF THE AWARD

1) When the arbitral tribunal is composed of more than one arbitrator, an award is made by a majority decision. If there is no majority, the award shall be made by the president of the arbitral tribunal alone.

2) The award shall state the reasons upon which it is based.

3) The award shall be deemed to be made at the place of the arbitration and on the date stated therein.

Commentary

Article 32(1) grants the arbitral tribunal the procedural flexibility to issue separate or partial awards on different issues at different times. This power is a crucial tool for effective case management, allowing a tribunal to resolve preliminary or dispositive issues, such as jurisdiction or liability, before proceeding to other, often more complex, phases of the arbitration. The UAE courts have recognized and endorsed this procedural power, viewing it as an inherent authority vested in an ICC tribunal by the Rules themselves.

The judgment in **Dubai Court of Appeal, Case No. 14/2025 (judgment dated 7 August 2025)**, provides a significant clarification on the scope of this authority. The case involved a challenge to a tribunal's decision to render a partial award on its own initiative to determine the scope of the matters in dispute. The applicant argued that this was an overreach of the tribunal's mandate, as the issuance of such a partial award was not explicitly foreseen or authorized by the parties in the Terms of Reference.

The Dubai Court of Appeal dismissed this challenge, thereby endorsing a flexible and pragmatic understanding of a tribunal's procedural powers. The court held that the authority to issue partial awards is an inherent power derived from the ICC Rules. It reasoned that the rules governing the arbitration grant the tribunal the right to issue decisions on preliminary matters, and that the challenged partial award, which ruled on the scope of the dispute, was therefore "supported by the provisions of the applicable rules."

This ruling is important because it clarifies that the Terms of Reference, while defining the tribunal's mission and the scope of the dispute, do not serve as an exhaustive and restrictive catalogue of its procedural powers. The procedural tools used to fulfil that mission, including the power to bifurcate proceedings and issue partial awards under Article 32, are derived from the institutional rules chosen by the parties. The judgment implies that unless the parties have taken the highly unusual step of explicitly prohibiting the issuance of partial awards, the tribunal retains the discretion to manage the proceedings efficiently by ruling on discrete issues as it sees fit.

The practical implication for arbitrations seated in the UAE is that parties can expect tribunals to engage in active case management, which may include the issuance of partial awards to resolve jurisdictional questions, determine the applicable law, or decide key points of liability before proceeding to quantum. This approach fosters efficiency by narrowing the issues in dispute and

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avoiding the unnecessary expenditure of time and costs on matters that can be resolved at an early stage. The ruling confirms that the UAE courts will support a tribunal's use of such procedural mechanisms, viewing them not as an excess of jurisdiction but as a proper exercise of the case management powers conferred by the ICC Rules.

ARTICLE 34

SCRUTINY OF THE AWARD BY THE COURT

Before signing any award, the arbitral tribunal shall submit it in draft form to the Court. The Court may lay down modifications as to the form of the award and, without affecting the arbitral tribunal's liberty of decision, may also draw its attention to points of substance. No award shall be rendered by the arbitral tribunal until it has been approved by the Court as to its form.

Commentary

The scrutiny process, unique to the ICC and enshrined in Article 34, is a critical quality control mechanism. The UAE courts have consistently interpreted this procedural step not merely as a review of the award's form, but as a holistic institutional certification of the award's procedural integrity. This judicial approach creates a strong evidentiary presumption of regularity, making it exceedingly difficult for a party to challenge an award on the basis of alleged procedural defects that occurred prior to the scrutiny.

The developmental arc of this jurisprudence begins with the foundational ruling in **Dubai Court of First Instance, Case No. 681/2012 (judgment dated 9 December 2012)**. In an action to ratify a foreign ICC award, the defendant alleged a procedural flaw related to the Terms of Reference. The court, however, did not need to examine the merits of that specific claim. Instead, it drew a decisive inference from the award itself, which recorded that the ICC Court had approved the draft final award. The court treated this act of scrutiny as definitive proof that all antecedent procedural requirements had been satisfied. This early judgment established the principle that the scrutiny process functions as an institutional seal of approval, validating the procedural history of the entire arbitration.

This principle was elevated to the highest court in **Dubai Court of Cassation, Case No. 434/2013 (judgment dated 23 November 2014)**. Here again, a party resisting enforcement raised procedural objections. The Court of Cassation effectively used the fact of the award's scrutiny as a shield against these challenges. It reasoned that the ICC Court's approval of the draft award signified that the institution's supervision had been properly carried out, confirming the validity of the entire process. For practitioners, this means that an award that has passed the ICC's scrutiny arrives before the UAE courts cloaked in a strong presumption of procedural correctness.

The potential for a failure to comply with the scrutiny process to be used as a ground for challenge was highlighted in **Dubai Court of Cassation, Case No. 384/2016 (dated 19 June 2016)**. Although the court did not rule on the merits of the point, it recorded the award debtor's specific allegation that the tribunal had violated the rules because it "did not submit the award before its signing to the Court for approval as to its form." The inclusion of this argument in the judicial record is significant. It shows that parties view the scrutiny process as a mandatory condition precedent to the valid rendering of an award. An alleged failure to comply can be framed as a serious procedural irregularity, potentially grounding a challenge under the New York Convention on the basis that the procedure was not in accordance with the parties' agreement.

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Finally, in **Dubai Court of Cassation, Case No. 767/2016 (judgment dated 26 February 2017)**, the court reinforced the high evidentiary burden placed on a party alleging non-compliance. In an enforcement action, the award debtor argued that the award was invalid because the draft had not been submitted for scrutiny. The Court of Cassation rejected this, finding that the challenging party had failed to provide any evidence to support its bare allegation. The court concluded that the award "had observed the rules applicable at the ICC," thereby implicitly finding that the necessary procedural steps, including scrutiny, were presumed to have been followed. This line of cases, read together, solidifies the position of the Dubai courts: the act of the ICC issuing a final, signed award serves as powerful prima facie evidence that all mandatory internal procedures, including the critical step of scrutiny under Article 34, have been properly adhered to.

ARTICLE 36

CORRECTION AND INTERPRETATION OF THE AWARD; REMISSION OF AWARDS

1) On its own initiative, the arbitral tribunal may correct a clerical, computational or typographical error, or any errors of similar nature contained in an award, provided such correction is submitted for approval to the Court within 30 days from notification of the award by the Secretariat pursuant to Article 35(1).

2) Any application of a party for the correction of an error of the kind referred to in Article 36(1), or for the interpretation of an award, must be made to the Secretariat within 30 days from receipt of the award by such party.

3) Any application of a party for an additional award as to claims made in the arbitral proceedings which the arbitral tribunal has omitted to decide must be made to the Secretariat within 30 days from receipt of the award by such party.

4) After transmission of an application pursuant to Articles 36(2) or 36(3) to the arbitral tribunal, the latter shall grant the other party or parties a short time limit, normally not exceeding 30 days, from receipt of the application by that party or parties, to submit any comments thereon. The arbitral tribunal shall submit its decision on the application in draft form to the Court not later than 30 days from expiry of the time limit for the receipt of any comments from the other party or parties or within such other period as the Court may decide. A decision to correct or to interpret the award shall take the form of an addendum and shall constitute part of the award. A decision to grant the application under paragraph 3 shall take the form of an additional award. The provisions of Articles 32, 34 and 35 shall apply *mutatis mutandis*.

5) Where a court remits an award to the arbitral tribunal, the provisions of Articles 32, 34, 35 and this Article 36 shall apply *mutatis mutandis* to any addendum or award made pursuant to the terms of such remission. The Court may take any steps as may be necessary to enable the arbitral tribunal to comply with the terms of such remission and may fix an advance to cover any additional fees and expenses of the arbitral tribunal and any additional ICC administrative expenses.

Commentary

Article 36 provides an important post-award mechanism for parties to seek correction of clerical errors or interpretation of ambiguities without resorting to the national courts. The UAE courts have recognized the utility and primacy of this internal remedy, establishing a clear expectation that parties should exhaust the procedures available within the arbitral framework before seeking recourse from the judiciary.

The judgment in **Dubai Court of Appeal, Case No. 8/2023 (judgment dated 5 June 2023)**, while not directly on correction or interpretation, provides relevant context by showing the court's deference to the ICC's administrative processes post-award. The court, in calculating the statutory time limit for a challenge, looked to the date of notification of the award by the ICC

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Secretariat under the precursor to the current rules. This shows a respect for the ICC's role in the formal communication of awards, which is the trigger for the 30-day time limit under Article 36(2) for seeking correction or interpretation. The court accepted the institutional notification as the operative event, reinforcing the integrity of the arbitral process and its internal timelines.

More directly on point is the ruling in **Dubai Court of Appeal, Case No. 7/2024 (judgment dated 18 April 2024)**. This judgment provides a crucial clarification on the relationship between the internal remedies of Article 36 and an action for annulment before the courts. The party seeking to set aside the award argued that it was void due to alleged contradictions between its reasoning and its operative part, which rendered it incomprehensible.

The Court of Appeal dismissed this ground for annulment. It held that the appropriate remedy for such an alleged defect is not an annulment action in the first instance, but an application to the arbitral tribunal itself for interpretation, as provided for under the ICC Rules. The court noted that the rules agreed to by the parties, as well as the analogous provisions in Article 49 of the UAE's Federal Arbitration Law, provide a specific path for resolving ambiguities. The court reasoned that a party cannot bypass this prescribed mechanism and then seek to invalidate the entire award in court on the same basis. The judgment makes the position clear: "the interpretation of the award is to be done by the arbitral tribunal... thus the plea is without legal basis and must be rejected."

This ruling establishes an important principle of exhaustion of remedies. Alleged defects in an award that fall within the scope of the correction and interpretation mechanisms of Article 36 are not, by themselves, grounds for annulment in the UAE. The courts expect parties to first avail themselves of the specific remedies provided for in their chosen institutional rules. This reinforces the autonomy of the arbitral process and prevents parties from using alleged ambiguities or minor errors as a pretext for launching a full-scale challenge to the award's validity in court.

ARTICLE 38

DECISION AS TO THE COSTS OF THE ARBITRATION

- 1) The costs of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court, in accordance with the scale in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the arbitral tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.
- 2) The Court may fix the fees of the arbitrators at a figure higher or lower than that which would result from the application of the relevant scale should this be deemed necessary due to the exceptional circumstances of the case.
- 3) At any time during the arbitral proceedings, the arbitral tribunal may make decisions on costs, other than those to be fixed by the Court, and order payment.
- 4) The final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.
- 5) In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.
- 6) In the event of the withdrawal of all claims or the termination of the arbitration before the rendering of a final award, the Court shall fix the fees and expenses of the arbitrators and the ICC administrative expenses. If the parties have not agreed upon the allocation of the costs of the arbitration or other relevant issues with respect to costs, such matters shall be decided by the arbitral tribunal. If the arbitral tribunal has not been constituted at the time of such withdrawal or termination, any party may request the Court to proceed with the constitution of the arbitral tribunal in accordance with the Rules so that the arbitral tribunal may make decisions as to costs.

Commentary

The power of an arbitral tribunal to allocate the costs of the arbitration, including the parties' legal fees, is a matter of significant practical importance. The jurisprudence of the UAE courts on this issue, particularly concerning Article 38 of the ICC Rules, has been complex and, until very recently, had developed into a highly restrictive position that diverged from general international practice. However, a landmark judgment from the Dubai Court of Cassation in late 2024 has decisively reversed this trend, providing much-needed clarity and aligning the UAE with the international consensus.

The genesis of the now-overturned restrictive approach can be seen in early first-instance decisions. In **Dubai Court of First Instance, Case No. 1118/2018 (judgment dated 15 October 2018)**, the court held that a tribunal's authority to award legal costs must be explicitly granted by a "clear and explicit text in the arbitration agreement," finding that the relevant ICC Rule did not meet this standard. This view was perplexingly adopted by the **Dubai Court of Appeal in Case No. 2595/2018 (judgment/26 February 2019)**, which upheld a partial annulment of an award's

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costs component based on an apparent misreading of the plain text of the ICC Rules. This restrictive trend continued in **Dubai Court of Appeal, Case No. 2/2023 (judgment/27 April 2023)**, which again required an explicit agreement beyond the Rules themselves.

This line of reasoning culminated in the landmark judgment of the **Dubai Court of Cassation in Case No. 861/2023 (judgment dated 5 February 2024)**. This ruling cemented the restrictive interpretation, holding that Article 46 of the UAE Federal Arbitration Law provided an exhaustive list of recoverable costs which did not include legal fees. In a finding of major significance, the Court of Cassation held that Article 38 of the ICC Rules was not sufficiently explicit to override this domestic provision and grant the tribunal the necessary power. This decision, followed by the **Dubai Court of Appeal in Case No. 12/2024 (judgment dated 27 May 2024)**, created a critical point of practice, requiring parties in UAE-seated arbitrations to include a separate, express clause empowering the tribunal to award legal fees to avoid the risk of partial annulment. While a conflicting appellate decision in **Dubai Court of Appeal, Case No. 7/2024 (judgment dated 18 April 2024)** found that Article 38 was sufficient on its own, the Cassation Court's ruling held greater precedential weight.

This entire body of restrictive jurisprudence was decisively overturned by the **Dubai Court of Cassation in Case No. 756/2024 (judgment dated 19 November 2024)**. This judgment marks a pivotal course correction, providing definitive clarity on the issue. The Court of Cassation was asked to review a Court of Appeal decision that had, following the precedent in *Case No. 861/2023*, annulled the part of an ICC award granting legal fees. The highest court reversed the appellate judgment and upheld the award in its entirety.

The court's reasoning was grounded in a meticulous textual analysis of Article 38(1) of the 2021 ICC Rules. It held that the parties' agreement to these rules displaces the more restrictive default provisions of the UAE Arbitration Law. The court found that the phrase in Article 38(1), "the reasonable legal and other costs incurred by the parties for the arbitration," is a clear, explicit, and unambiguous grant of authority. It reasoned that the language was intentionally broad and that legal fees (attorneys' fees) are a primary and self-evident component of the "legal and other costs" that parties reasonably incur. Furthermore, the court noted that the party challenging the costs award had, during the arbitration, submitted its own claim for legal fees, thereby implicitly acknowledging the tribunal's jurisdiction to rule on the matter. The court referenced international practice and the ICC's own explanatory materials to support its conclusion that the plain meaning of the rule is to empower tribunals to award such costs.

The effect of this ruling is profound and immediate. It decisively overturns the precedent set in *Case No. 861/2023*. It establishes that, for arbitrations seated in the UAE and governed by the 2021 ICC Rules, the agreement to the Rules is, by itself, sufficient to empower the arbitral tribunal to award the parties' reasonable legal representation costs. A separate, explicit text in the arbitration agreement or Terms of Reference is no longer required. This landmark judgment aligns the UAE's jurisprudence with prevailing international standards, gives full effect to the plain meaning of the ICC Rules, and provides significant legal certainty to parties arbitrating in the jurisdiction.

(Wasel & Wasel was lead counsel in **Dubai Court of Cassation in Case No. 756/2024.**)

APPENDIX I

STATUTES OF THE INTERNATIONAL COURT OF ARBITRATION

While the Statutes of the ICC Court are primarily an internal governance document, their practical effects can have significant legal consequences, as demonstrated by the UAE courts. In **Abu Dhabi Court of Appeal, Case No. 9/2022 (judgment dated 2 February 2022)**, the court's decision turned on the administrative and operational structure of the ICC itself. The fact that the ICC, pursuant to its statutes, maintains a representative office in the Abu Dhabi Global Market (ADGM) was the decisive factor. This physical presence, established under the ICC's own governance framework, created the connecting factor that led the onshore court to conclude that a general reference to "Abu Dhabi" as the seat should be interpreted as a choice of the ADGM's distinct legal jurisdiction. This ruling illustrates that the ICC's institutional footprint is not merely an administrative detail but can be a determinative factor in identifying the supervisory court and the applicable *lex arbitri*.

APPENDIX II

RULES FOR ARBITRAL TRIBUNAL SECRETARIES

The use of administrative secretaries is a common feature of modern international arbitration, and the ICC has formalized their role in Appendix II. The UAE courts have taken a pragmatic and textualist approach to challenges based on their appointment. In **Dubai Court of Appeal, Case No. 22/2023 (judgment dated 14 December 2023)**, a party sought to annul an award on the novel ground that the tribunal had appointed a secretary without its consent. The court dismissed this challenge in a straightforward manner. Its reasoning was based on a strict reading of the UAE's primary arbitration legislation. The court held that the appointment of a tribunal secretary is not among the exclusive and exhaustive grounds for annulling an award as enumerated in Article 53 of the UAE Federal Arbitration Law. By finding that the objection did not fall within any of the statutory grounds for annulment, the court determined that the issue was not a matter that could invalidate the award. This approach provides assurance that UAE courts are unlikely to entertain challenges based on the use of tribunal secretaries in ICC arbitrations, particularly where their appointment adheres to the ICC's own guidelines.

APPENDIX VI

EXPEDITED PROCEDURE RULES

The ICC's Expedited Procedure Rules offer a streamlined and more cost-effective alternative for certain disputes. The judgment of the **Abu Dhabi Court of Cassation in Case No. 1051/2020 (judgment dated 4 January 2021)**, is significant for its explicit recognition and enforcement of the parties' agreement to apply these rules. The parties had initially agreed to a three-member tribunal but subsequently opted during the proceedings for a sole arbitrator and the application of the Expedited Procedure. The highest court in Abu Dhabi gave full effect to this post-dispute modification. By treating the agreement to apply the rules in Appendix VI as a valid amendment to the original arbitration clause, the court confirmed that parties are free to opt into the expedited procedure even after a dispute has arisen. This decision provides valuable legal certainty, signaling that the UAE judiciary understands and respects the different procedural tracks offered by the ICC and will enforce the outcomes of proceedings conducted under these specialized rules.

ICC DISPUTE BOARD RULES

The ICC's multi-tiered dispute resolution offerings include mechanisms that are distinct from arbitration, such as Dispute Boards. The judgment in **Dubai Court of Cassation, Case No. 342/2022 (judgment dated 31 August 2022)**, provided an important judicial endorsement of the fundamental distinction between a Dispute Adjudication Board ("DAB") and an arbitral tribunal. In the course of finding that a clause providing for the appointment of a DAB was not an agreement to arbitrate, the court engaged directly with the substance of the ICC's own institutional rules. It accepted the appellant's argument, which was based on the text of the ICC Dispute Board Rules, that Dispute Boards are not arbitral tribunals and their conclusions are not immediately enforceable as awards. This ruling is significant as it demonstrates the UAE's highest court's sophistication in distinguishing between different dispute resolution mechanisms offered by the same institution. It gives full effect to the distinct character of Dispute Boards, providing certainty to parties, particularly in the construction sector, that an agreement to use a DAB will not be misinterpreted by UAE courts as an unforeseen submission to final and binding arbitration.

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ABOUT

About The Firm

We are a proudly family-owned international disputes and geopolitics firm with over thirty awards and nominations and honorable mentions worldwide with offices in Washington D.C., Melbourne, Toronto, and Abu Dhabi. Our lawyers and experts have been engaged on billion-dollar mandates worldwide in the private and public sector and have led and advised governments on critical geopolitics matters.

Our Clients

Our esteemed clientele encompasses a diverse array of entities and individuals, ranging from multinational corporations and illustrious Fortune 500 companies to prestigious publicly listed entities. We also serve State-owned enterprises, prominent family-owned businesses with substantial net worth, and ultra-high-net-worth individuals who demand the highest level of expertise and discretion. Furthermore, our reputation for excellence and thoroughness in our field has made us a preferred partner for leading law firms worldwide, who engage us as co-counsel to leverage our specialized skills and insights in complex legal matters.

Our Professionals

At Wasel & Wasel, our distinguished team comprises elite lawyers and advisors, meticulously selected from premier law firms and prestigious Ivy League institutions. Their collective experience spans high-stakes, multi-billion dollar disputes and strategic positions within the echelons of government. Equally integral to our firm's prowess are our geopolitical experts, drawn from the corridors of European parliaments, the halls of the UN and NATO, and the upper ranks of the US State Department, as well as military and intelligence sectors globally, particularly from the Middle East, Asia, and Africa. This blend of legal acumen and geopolitical insight forms the cornerstone of our services, offering clients unparalleled expertise in both dispute resolution and strategic geopolitical advisory.

Awards & Recognitions

The firm's legal excellence is consistently demonstrated through numerous top-tier industry awards. The Middle East Legal Awards have honored the firm as Arbitration Team of the Year (2024, 2022), Litigation Team of the Year (2024), Regional Law Firm of the Year (2020), and recognized it for Innovation Through Technology (2024). From the Thomson Reuters ALB Awards, the firm has secured a multitude of "Law Firm of the Year" titles, including for Arbitration (2023, 2021), Litigation (2023, 2021), Construction and Real Estate (2023, 2022), the UAE (2023, 2022), Tax (2023), and the Middle East (2021). Its success continued at The Oath Legal Awards, where it won "Law Firm of the Year" in 2023 across four distinct categories: Real Estate & Construction, Banking & Finance, International Law, and TMT. In addition to these competitive wins, the firm and its lawyers have earned significant professional recognitions. Individual practitioners have been repeatedly named a National Expert in both Investor-State Disputes and Tax Controversy by Getting The Deal Through (2023, 2022) and listed among the MENA Super 50 Lawyers by Thomson Reuters (2022). Further distinctions include being named a Distinguished Lawyer for

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International Arbitration by Lawyers of Distinction (2021) and receiving the client-nominated Lexology Client Choice award for Administrative Law (2022). The firm's practice has also been endorsed as a Recommended Firm for International Arbitration by Global Law Experts (2022).

Our Locations

We operate in offices located in Washington D.C., Melbourne, Toronto, and Abu Dhabi. Our work extends to jurisdictions and markets globally including in Switzerland, New York, South Korea, Jordan, the Dubai International Financial Centre, London and elsewhere. We support our clients on regional and international matters. For a unified and seamless experience, please direct inquiries to any of our global offices through our central dedicated inquiry email address:

inquiry@waselandwasel.com

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AUTHOR

Mahmoud Abuwasel is the managing partner of Wasel & Wasel and an authority on the interplay between international arbitration rules and the jurisprudence of United Arab Emirates courts. His unique perspective is shaped by a distinguished career that bridges Western legal traditions and deep-rooted expertise in Middle Eastern law, having practiced with former senior staff from the Ronald Reagan and George Bush Sr. administrations and developed practice with the former Chief Justice of the UAE Federal Supreme Court.

A qualified arbitrator and licensed solicitor, Mr. Abuwasel has extensive, first-hand experience managing high-stakes commercial arbitrations under a wide array of institutional rules, with a particular focus on the ICC Rules of Arbitration. His practice involves representing multinational corporations, government agencies, and ultra-high-net-worth individuals in complex disputes spanning construction, energy, and international trade. This deep practical knowledge of the ICC framework provides the foundation for his incisive commentary.

Complementing his arbitration work is a formidable litigation practice before the full spectrum of UAE courts, including the onshore courts of Dubai and Abu Dhabi and the common law courts of the DIFC and ADGM. He is frequently instructed on matters of enforcement and annulment of arbitral awards, giving him direct insight into how the judiciary interprets and applies arbitral rules and procedures. This dual expertise allows him to analyze the ICC Rules not just as a procedural code, but through the critical lens of their ultimate enforceability within the UAE's sophisticated legal landscape.

His authority is further recognized internationally, as he is regularly sought as a legal expert on UAE law by foreign courts, including the High Court of Justice of England and Wales and the New York Supreme Court. A prolific author for outlets like LexisNexis and Thomson Reuters, Mr. Abuwasel contributes actively to global legal discourse, making his commentary an essential resource for practitioners navigating disputes in the region.

Contact:

mabuwasel@waselandwasel.com