

In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

**COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION
BETWEEN**

A28
Claimant

and

B28
Defendant

JUDGMENT OF JUSTICE PAUL HEATH KC



Neutral Citation:	[2026] ADGMCFI 0012
Before:	Justice Paul Heath KC
Decision Date:	17 April 2026
Decision:	<ol style="list-style-type: none"> 1. The Arbitration Claim is dismissed. 2. Mr AB has been validly appointed by the ICC Court as the sole arbitrator in the ICC Proceedings. 3. The Claimant shall pay the Defendant's costs of the Arbitration Claim, which are summarily assessed in the sum of AED 50,000.
Hearing Date(s):	16 December 2025
Date of Orders:	17 April 2026
Catchwords:	Arbitration clause providing for unilateral right of appointment of arbitrator and application of ICC Rules. Whether Court has jurisdiction to set aside decisions of the ICC Court: (i) appointing an arbitrator under Articles 12(9) and 13(4)(a) of the ICC Rules; and (ii) rejecting a party challenge under Article 14. Whether exercise of jurisdiction is precluded by Article 11(4) of the ICC Rules or sections 19 and 21 of the ADGM Arbitration Regulations 2015.
Legislation Cited:	<p>ADGM Arbitration Regulations 2015</p> <p>ADGM Court Procedure Rules 2016</p>
Cases Cited:	<p><i>A3 v B3</i> [2019] ADFGMCFI 0004</p> <p><i>A24 v B24</i> [2025] ADGMCFI 0019</p> <p><i>A30 v E30</i> [2025] ADGMCA 0003</p> <p><i>Jivraj v Hashwani</i> [2011] UKSC 40</p> <p><i>Sierra Fishing Company v Farran</i> [2015] EWHC 140 (Comm)</p>



Case Number:	ADGMCFI-2025-301
Parties and representation:	<p>For the Claimant</p> <p>Bushra Ahmed of KBH Limited, assisted by Jack Kewley of KBH Limited, instructed by Xu Yongji of Hourani & Partners</p> <p>For the Defendant</p> <p>Nicholas Carnell and Denis Moriarty of Davidson & Co Legal Consultants</p>

JUDGMENT

Introduction

- On 28 November 2022, A28 (“**A28**”), as the principal contractor, entered into a sub-contract (the “**Contract**”) with B28 (“**B28**”) whereby the latter undertook to provide engineering, mechanical, electrical and plumbing works for 230 villas situated in the ABC Development, in the Emirate of Abu Dhabi (the “**Emirate**”).
- Clause 11.2 of the Contract (the “**Arbitration Agreement**”) provided a dispute resolution mechanism. Although there is no reference to governing law in the Arbitration Agreement, there was no dispute that the Arbitration Agreement should be interpreted in accordance with Abu Dhabi Global Market (“**ADGM**”) law.¹ Clause 11.2 stated:

“11.2 Unless settled amicably, the dispute shall be referred to and finally resolved by arbitration administered by the International Chamber of Commerce under its Rules of Arbitration. The legal place, or seat, of the arbitration shall be Abu Dhabi Global Market. The language of the arbitration shall be English. The number of arbitrators shall be one, appointed by the Main Contractor [i.e., A28].”

(Emphasis added)

- Disputes arose. The parties were unable to resolve them amicably. That brought the requirement for arbitration into play.

¹ Argument proceeded on the basis that ADGM law governed the interpretation of the Arbitration Agreement, notwithstanding that the governing law of the contract is that of the Emirate of Abu Dhabi. I proceed on the basis that ADGM law does govern the Arbitration Agreement. More generally, see *A24 v B24* [2025] ADGMCFI 0019 at paragraphs 29–33.



4. Pursuant to the Arbitration Agreement, B28 made a Request for Arbitration (the “**Request**”) to the International Chamber of Commerce (“**ICC**”), the institution chosen by the parties to administer the arbitration. The Request was made under the ICC Arbitration Rules 2021 (the “**ICC Rules**”), the rules chosen by the parties to govern the arbitration. In its Request, B28 did not nominate a proposed arbitrator, and instead contested A28's right to unilateral appointment, inviting the Court of Arbitration of the ICC (the “**ICC Court**”) to make a direct appointment under Article 12(3) of the ICC Rules. A28 opposed B28’s position on the basis that the Arbitration Agreement validly conferred a right of exclusive appointment on it.² Following a process I describe later, the ICC Court has appointed a sole arbitrator, contrary to A28’s urgings.³

The issues

5. A28 commenced this proceeding on 16 September 2025. It seeks a ruling on whether it has the exclusive right to appoint the sole arbitrator in an arbitration with B28. The following relief is sought:
- a. A declaration that, pursuant to the Arbitration Agreement and section 19(2) of the ADGM Arbitration Regulations 2015 (the “**Arbitration Regulations**”), A28 has the contractual and statutory right to appoint a sole arbitrator.
 - b. An order removing the arbitrator appointed by the ICC Court.
 - c. A declaration that the ICC Court’s appointment of an arbitrator is inconsistent with both the Arbitration Agreement and the law of the seat.⁴
 - d. A declaration that the decision of the ICC Court of 24 July 2025 rejecting A28’s challenge to its appointment of an arbitrator be set aside.
6. B28 opposes A28’s claim. It supports the ICC Court’s decision to appoint an arbitrator under the ICC Rules, to which the parties agreed in the Arbitration Agreement. Although the ICC and its appointed arbitrator were made aware of this proceeding and the relief sought on 27 October 2025, pursuant to a direction of this Court, neither has sought permission to intervene.
7. A28’s claim was heard on 16 December 2025. Ms Bushra Ahmed appeared for A28, and Mr Nicholas Carnell, for B28. By the end of the hearing, it had become clear that the issues reduced to two. On 23 December 2025, after receiving comments from counsel, I ordered that additional submissions be filed, to be confined to the remaining issues, namely:

² Set out at paragraph 2 above.

³ See paragraphs 17–23 below.

⁴ The parties agree that the Abu Dhabi Global Market is the seat of the arbitration: see clause 11.2 of the Contract, set out at paragraph 2 above and paragraph 9.a below.



- “a. *Whether, as the court of the arbitral seat, ADGM Courts have jurisdiction to set aside a decision of the ICC Court (or another body under materially similar arbitral rules) concerning:*
- i. *the appointment of an arbitrator under article 12(9) of the ICC Rules (or its equivalent under materially similar arbitral rules); and*
 - ii. *a challenge to the appointment of an arbitrator under article 14(3) of the ICC Rules (or its equivalent under materially similar arbitral rules); or*
- b. *Whether such review is precluded by:*
- i. *article 11(4) of the ICC Rules (or its equivalent under materially similar arbitral rules); and/or*
 - ii. *sections 19 and 21 of the ADGM Arbitration Regulations 2015.”*

8. In accordance with the timetable established on 23 December 2025, both parties filed written submissions on 16 January 2026 and reply submissions on 2 February 2026. It was agreed that no further hearing was required. Sadly, Mr Carnell had passed away in the period between the hearing and 16 January 2026. B28’s additional written submissions were therefore presented by Mr Denis Moriarty. I am satisfied that the issues raised by A28 can be determined by reference to the two points addressed in the post-hearing submissions.

9. By the conclusion of the 16 December 2025 hearing, the parties agreed:

 - a. The ADGM is the seat of the arbitration;
 - b. The Court of First Instance of ADGM Courts is the supervising court;
 - c. The Arbitration Regulations apply to the arbitration as the law of the seat;⁵
 - d. Mandatory provisions of the law of the seat take precedence over any agreement of the parties or institutional rules;⁶ and
 - e. An agreement that one party to an arbitration agreement has a unilateral ability to exercise a right or option (such as the sole right of appointment of an arbitrator) is legitimate and enforceable under ADGM law.⁷

⁵ ADGM Arbitration Regulations 2015, section 8.

⁶ *A30 v E30* [2025] ADGMCA 0003, at paragraph 22 (Chief Justice Lord David Hope, Justice Kenneth Hayne and Justice Sir Nicholas Patten).

⁷ *A3 v B3* [2019] ADGMCFI 0004, at paragraph 19 (Justice Sir Andrew Smith).



The ICC Court's appointment process

10. Primarily, I take my summary of the process by which the ICC Court made and confirmed its appointment of a sole arbitrator from the witness statement of Mr Xu Yongji, the legal representative of A28. B28 does not challenge material statements of fact contained in that witness statement.
11. B28 filed its Request with the ICC on 9 December 2024. On 12 December 2024, the Secretariat of the ICC (the "**Secretariat**") acknowledged commencement of the arbitration. On 2 January 2025, the Secretariat invited A28 to submit its Answer within 30 days.
12. In seeking A28's Answer, the Secretariat acknowledged that A28 and B28 had differing views on the mode of appointment of the sole arbitrator. B28 had requested an independent ICC Court appointment, whereas A28 maintained that it had a contractual right to appoint the sole arbitrator under the Arbitration Agreement.⁸
13. On 2 February 2025, A28 purported to appoint AA as sole arbitrator. The Secretariat granted an extension of time for A28 to submit its Answer and invited both parties to comment on A28's proposed appointee.
14. On 12 February 2025, B28 objected to AA's appointment. The sole ground for objection was that A28 had appointed her rather than the ICC Court, which, under Article 12(3) of the ICC Rules, is to appoint the sole arbitrator if the parties cannot agree on a sole arbitrator.⁹ No concerns were raised about AA's impartiality and independence.
15. On 12 February 2025, A28 submitted to the Secretariat that there were no circumstances that justified a deviation from the agreed appointment procedure under the Arbitration Agreement.
16. On 17 February 2025, A28 submitted its Answer. Having received and considered A28's Answer, the Secretariat advised the parties that the ICC Court would make a decision on the constitution of the arbitral tribunal. On 6 March 2025, it wrote to AA providing case information and requesting her "*Statement of Acceptance, Impartiality and Independence*". AA returned that document to the Secretariat duly completed, together with a copy of her curriculum vitae. The Secretariat forwarded those documents to both A28 and B28.
17. On 27 March 2025, the ICC Court decided that it would appoint a sole arbitrator, relying on Article 12(9) of the ICC Rules.¹⁰ The Secretariat conveyed that decision to the parties on 28

⁸ Set out at paragraph 2 above.

⁹ Article 12(3) of the ICC Rules is set out at paragraph 35 below.

¹⁰ Article 12(9) of the ICC Rules is set out at paragraph 35 below.



March 2025, advising that it would revert to the parties once the ICC Court had made an appointment.

18. On 21 April 2025, the legal representatives of A28 wrote to the ICC Secretariat, noting the decision of the ICC Court that it would appoint the sole arbitrator. In doing so, they proceeded to advise the Secretariat of a change that A28 had made to the identity of the proposed arbitrator. In effect, A28 purported to remove AA as its appointee and “appointed” Mr GM in her stead. Relevantly, in their letter of 21 April 2025, the legal representatives said:

“[A28] has considered the appointment of AA and would like to change its appointment of the sole arbitrator to Mr GM. [A28] has confirmation from Mr GM that he is available and conflict free. Please see attached his CV.

[A28] kindly requests that the [ICC] Court confirms Mr GM’s appointment as sole arbitrator in these proceedings.”

19. In subsequent correspondence, A28 submitted that the ICC Court’s decision of 27 March 2025 was inconsistent with the law of the seat (being ADGM law), the Arbitration Agreement and the principle of party autonomy in arbitration. It objected specifically to the ICC Court’s reliance on Article 12(9) of the ICC Rules. The ICC Court was asked to reconsider its decision of 27 March 2025. A28 also foreshadowed an intention to seek judicial intervention before the ADGM Courts.
20. By letter dated 23 May 2025, the Secretariat advised A28 and B28 of the ICC Court’s decisions:

“On 22 May 2025, the [ICC Court]:

– decided not to reconsider its decision dated 27 March 2025 to appoint the sole arbitrator in accordance with Article 12(9); and

– directly appointed Mr A as sole arbitrator (Article 13(4)(a)).”¹¹

21. On 20 June 2025, under Article 14 of the ICC Rules, A28 submitted a challenge to the ICC Court’s appointment of the sole arbitrator.¹² B28 objected to the challenge on the grounds that it was both invalid and inadmissible, reiterating that (in its view) the ICC Court’s appointment was correctly made.
22. A28’s challenge was supported by detailed legal submissions and authorities. It drew the ICC Court’s attention to sections 14(6) and 19(2) of the Arbitration Regulations,¹³ as well

¹¹ Article 13(4) of the ICC Rules is set out at paragraph 34-35 below.

¹² The relevant parts of Article 14 of the ICC Rules are set out at paragraph 35-37 below.

¹³ Set out at paragraphs 31-32 below.



as this Court’s decision in *A3 v B3*.¹⁴ In that case, Justice Sir Andrew Smith had confirmed the validity of an arbitration agreement that gave one party the right to amend its terms unilaterally. Section 14(6) of the Arbitration Regulations likewise confirms the validity of unilateral or asymmetrical arbitration agreements under ADGM law. Fulsome submissions were also made by the legal representatives of B28. Accordingly, the ICC Court was fully informed of the parties’ respective positions by the time it made its decision on A28’s challenge.

23. By letter dated 25 July 2025, the Secretariat advised the parties that:

“On 24 July 2025, the [ICC Court]:

- 1. decided that the challenge filed against Mr BAB, acting as sole arbitrator, is admissible (Article 14(3)); and*
- 2. rejected the challenge on the merits (Article 14(3)).”*

24. No reasons were given by the ICC Court for that decision. A28 requested that reasons be given. By letter dated 29 July 2025, the Secretariat advised that, pursuant to Article 5(2) of Appendix II the ICC Rules and the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules, any request for the communication of reasons *“must be made in advance of the decision in respect of which reasons are sought”*. Because A28 had not made such a request in advance of the ICC Court’s decision, its request for reasons was denied. The ICC Court was entitled to make that decision.

25. It is against that background that the two issues with which I deal in this judgment fall to be determined.¹⁵ For convenience, I re-state the two issues in shorthand form:

- a. Does this Court have jurisdiction to set aside decisions of the ICC Court: (i) appointing an arbitrator under Articles 12(9)¹⁶ and/or 13(4)(a)¹⁷ of the ICC Rules; and (ii) rejecting a challenge to the appointment of an arbitrator under Article 14(3)¹⁸ of the ICC Rules? (The **“Jurisdiction Issue”**).¹⁹

¹⁴ *A3 v B3* [2019] ADGMCFI 0004.

¹⁵ Set out at paragraph 7 above.

¹⁶ Set out at paragraph 35 below.

¹⁷ Ibid.

¹⁸ Set out at paragraph 37 below.

¹⁹ While both Articles 12(9) and 13(4)(a) of the ICC Rules were discussed in argument, the primary focus was on Article 12(9) pursuant to which the ICC Court decided to appoint the sole arbitrator proposed by A28. See paragraphs 17 and 20 above.



b. If jurisdiction does exist, is this Court’s exercise of such jurisdiction precluded by Article 11(4) of the ICC Rules²⁰ and/or sections 19²¹ and 21²² of the Arbitration Regulations? (The “**Preclusion Issue**”)

26. Although I have stated both issues by reference to decisions of the ICC Court, the point of principle is more general, and I am conscious that this judgment may apply in respect of decisions made by other arbitral institutions under materially similar arbitral rules.

ADGM Arbitration Regulations and ICC Rules

(a) Introductory comments

27. The Jurisdiction Issue concerns whether this Court has jurisdiction to set aside a decision of the ICC Court in the circumstances so described in this case. A28’s argument that the ICC Court acted in a manner inconsistent with the Arbitration Agreement can only be determined if this Court has jurisdiction to review the ICC Court’s decision. In considering this Court’s jurisdiction to review the ICC Court’s decision, it is necessary to consider the parties’ incorporation of the ICC Rules into the Arbitration Agreement, and specifically, how an apparent contradiction within the Arbitration Agreement is to be resolved.

28. Resolution of both the Jurisdiction and Preclusion Issues requires consideration of various provisions of the Arbitration Regulations, as well as the ICC Rules as incorporated by the Arbitration Agreement.²³ The Preclusion Issue will only require determination if I were to hold that this Court did have jurisdiction to review and set aside decisions of the ICC Court.

29. For ease of reference, I reproduce relevant parts of the Arbitration Regulations and the ICC Rules.

(b) The Arbitration Regulations

30. Section 8 of the Arbitration Regulations provides that Part 3 of the Arbitration Regulations (which includes the provisions set out below) apply to all arbitrations in which the ADGM is the seat.²⁴ Section 9(1) divides the provisions of the Arbitration Regulations into two categories: “*mandatory*” and “*non-mandatory*”. The provisions listed in Schedule 2 are the “*mandatory*” provisions. They have effect “*notwithstanding any agreement to the contrary*”.²⁵

31. Sections 12, 14(1) and (6), 20, 21 and 62(1)(a)(v) of the Arbitration Regulations are all mandatory provisions listed in Schedule 2. They provide:

²⁰ Set out at paragraph 35 34 below.

²¹ Set out at paragraph 32 below.

²² Set out at paragraph 31 below.

²³ Set out at paragraph 2 above.

²⁴ ADGM Arbitration Regulations 2015, section 8.

²⁵ *Ibid*, section 9(1). See also *A30 v E30* [2025] ADGMCA 0003, discussed at paragraph 40 below.



“12. Extent of court intervention

In matters governed by these Regulations, no court shall intervene except to the extent so provided in these Regulations.

...

14. Arbitration Agreement

(1) *An arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.*

...

(6) *An arbitration agreement giving any party a unilateral or asymmetrical right to refer a dispute either to an arbitral tribunal or a court does not contravene these Regulations and shall not be rendered invalid for that reason.*

...

20. Grounds for challenge

(1) *When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and any arbitral institution administering the arbitration.*

(2) *An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.*

21. Challenge procedure

(1) *The parties are free to agree on a procedure for challenging an arbitrator.*

(2) *In the absence of such agreement, a party who intends to challenge an arbitrator shall, within 30 days after becoming aware of the constitution of*



the arbitral tribunal or after becoming aware of any circumstance referred to in section 20(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral institution administering the arbitration or, where there is no such institution, the Court shall decide on the challenge. While such a request to the arbitral institution administering the arbitration or, where there is no such institution, to the Court, is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

...

62. Grounds for refusing recognition or enforcement

(1) *Recognition or enforcement of an arbitral award, irrespective of the State or jurisdiction in which it was made, may be refused by the Court only if:*

(a) *the party making the application furnishes proof that:*

...

(v) *the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with the law of the country where the arbitration took place; or*

...”

32. Section 13 of the Arbitration Regulations sets out the functions of assistance and supervision which are to be performed by the supervising court and those which are to be performed by the supervising court subject to any process agreed by the parties. Section 13 provides:

“13. Authority of the Court to perform functions of arbitration assistance and supervision

The functions referred to in sections 16, 27, 30, 31, 32, 48, 58, 61 and 62 of these Regulations shall be performed by the Court, while the functions referred to in sections 19(3), 19(4), 19(5), 19(6), 21(2), 22(1), 23(2), 39(2) and 56(5) shall be performed by the Court subject to any process agreed between the parties in the arbitration agreement or by a subsequent written agreement.”



33. Sections 18 and 19(1), (2), (4), (5) and (6) of the Arbitration Regulations deal specifically with the number and appointment of arbitrators. They are non-mandatory provisions. They provide:

“18. Number of arbitrators

- (1) *The parties are free to determine the number of arbitrators provided that it is an odd number.*
- (2) *If there is no such determination, the number of arbitrators shall be one (1).*

19. Appointment of arbitrators

- (1) *No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.*
- (2) *The parties are free to agree on a procedure for appointing the arbitrator or arbitrators.*

...

- (4) *Where there are multiple claimants and/or multiple respondents, and where the dispute is to be referred to three (3) arbitrators, the multiple claimants, jointly, and the multiple respondents, jointly, shall each appoint one (1) arbitrator in accordance with the appointment procedure agreed upon by the parties or, where there is no such agreement, in accordance with subsection (3)(b). The presiding arbitrator shall also be appointed in accordance with subsection (3)(b).*
- (5) *In the absence of a joint nomination pursuant to subsection (4), and where all parties are unable to agree to a method for the constitution of the arbitral tribunal, the arbitral institution administering the arbitration, or where there is no such institution, the Court, may appoint each member of the arbitral tribunal and shall designate one of them to act as president.*
- (6) *A decision on a matter entrusted by subsection (3), (4) or (5) to any arbitral institution administering the arbitration or, where there is no such institution, the Court, shall not be subject to appeal. The arbitral institution administering the arbitration or, where there is no such institution, the Court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third*



arbitrator, shall also take into account the advisability of appointing an arbitrator of a nationality other than that of any party.”

(c) *The ICC Rules*

34. Article 11 of the ICC Rules sets out general provisions relating to the arbitral tribunal. Relevantly, Articles 11(4) and (6) provide:

“ARTICLE 11

...

- (4) *The decisions of the [ICC Court] as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.*

...

- (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.”*

35. B28 had urged the ICC Court to appoint the sole arbitrator under Article 12(3) of the ICC Rules. In deciding to appoint a sole arbitrator, the ICC Court relied on Article 12(9) of the ICC Rules. It proceeded to appoint Mr AB directly, referencing Article 13(4)(a) of the ICC Rules. Articles 12(3) and (9) and 13(1) and (4)(a) of the ICC Rules state:

“ARTICLE 12

...

- (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 [ICC Court].*

...

- (9) *Notwithstanding any agreement by the parties on the method of constitution of the arbitral tribunal, in exceptional circumstances the [ICC 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.*



ARTICLE 13

(1) *In confirming or appointing arbitrators, the [ICC 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).*

...

(4) *The [ICC 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;*

””

36. A28 contends that the ICC Court exercised its institutional powers inconsistently with the Arbitration Agreement and ADGM law by relying on Article 12(9) to appoint the sole arbitrator in circumstances where no “*exceptional circumstances*” were present. It also disputes the ICC Court’s reliance on Article 13(4)(a) as procedurally inappropriate and legally unsound.

37. Article 14 of the ICC Rules governs challenges to arbitrators under the ICC Rules. It provides:

“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 [ICC 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.”

The competing contentions

(a) A28’s position

38. A28 submits that this Court has jurisdiction to hear and determine its challenge to the ICC Court’s appointment of Mr AB. It does so on the basis that any appointment contrary to the terms of the parties’ agreement violates mandatory terms of the law of the seat; namely, sections 14(6) and 20(2) of the Arbitration Regulations.²⁶ A28 submits that sections 8, 12 and 13²⁷ of the Arbitration Regulations provide for this Court to have supervisory jurisdiction to enforce its mandatory provisions. It also relies on *A30 v E30*,²⁸ a recent judgment of the ADGM Court of Appeal, in which it was held that the law of the seat of the arbitration must be applied to ensure that mandatory obligations are given effect, notwithstanding any agreement to the contrary between the parties or provided by institutional rules.²⁹
39. In *A30 v E30*, the Court of Appeal was concerned with a without notice application for a worldwide freezing order, in the context of a pre-existing arbitration agreement between the parties. The issue was whether consent from the arbitral tribunal was required before the claimant could seek a freezing order from the Court. The Court of Appeal formulated the question for its determination as follows:³⁰

“2. *The question in this appeal is whether the Appellants, who are parties to an arbitration under the LCIA Arbitration Rules 2020 (the “LCIA Rules”) which has its seat in the Abu Dhabi Global Market (“ADGM”), can obtain a worldwide freezing order under section 31 of the ADGM Arbitration Regulations 2015 (the “Arbitration Regulations”) without having first obtained authorisation from the tribunal under article 25.3 of the LCIA Rules. The Judge held that it would not be just for him to grant the application. As the tribunal had not given its authorisation under that article, the application was being made to him in breach of contract. The Appellants submit that, under the Arbitration Regulations as properly construed and applied, it was open to him to make the order.”*

²⁶ Set out at paragraph 31 above.

²⁷ Set out at paragraphs 31 and 32 above.

²⁸ *A30 v E30* [2025] ADGMCA 0003 (Chief Justice Lord David Hope, Justice Kenneth Hayne and Justice Sir Nicholas Patten).

²⁹ *Ibid*, at paragraphs 21-23.

³⁰ *Ibid*, at paragraph 2.



40. It is an established principle of English law that courts of the seat of the arbitration have a supervisory jurisdiction. In *A30 v E30*, the Court of Appeal described an agreement as to the seat as “*analogous to an exclusive jurisdiction clause*”.³¹
41. A28 emphasises that it is not asking this Court to exercise appellate or review jurisdiction in respect of the merits of the ICC Court’s decision. Rather, it frames the question as whether the supervising court is entitled to determine whether an arbitral institution has acted outside of the limits of the authority that the parties have conferred on it. If the supervisory jurisdiction can be exercised in that way, A28 contends that the relief that it seeks is available for the Court to direct.³²
42. As to whether supervisory review is precluded by Article 11(4) of the ICC Rules³³ and/or sections 19 and 21 of the Arbitration Regulations,³⁴ A28 submits that it is not. A28 contends that, while ICC Court decisions on appointment, confirmation, challenge or replacement of arbitrators are “*final*”, that term does not extend beyond internal institutional finality and remains subject to the law of the seat.³⁵ Accordingly, A28 asserts, there is no impediment to this Court declaring that the ICC Court lacked power to make its own appointment of the sole arbitrator and that Mr AB should be removed.
- (b) *B28’s position*
43. B28 submits that the Arbitration Agreement reflects the parties’ intention to have any arbitration conducted in accordance with both its terms and the ICC Rules. Where there is a conflict between the Arbitration Agreement and the ICC Rules, B28 submits that, applying the *contra proferentem* principle, the ICC Rules should prevail. On that basis, even though the Arbitration Agreement records the parties’ position as being that A28 had the exclusive right to appoint a sole arbitrator, that agreement must yield to the terms of the ICC Rules, to which the parties also bound themselves.
44. B28 contends that the ICC Rules require any arbitrator appointment to be confirmed by the ICC Court. In agreeing to ICC arbitration, the parties agreed not only to the ICC Rules but also ICC supervisory mechanisms, including supervision of the tribunal constitution process. That, B28 submits, reflects the established autonomy of institutional arbitration frameworks, relying on what was said by the Supreme Court of the United Kingdom in *Jivraj v Hashwani* concerning party autonomy and the breadth of party discretion to structure their processes for dispute resolution.³⁶ I note, however, that *Jivraj v Hashwani* does not deal directly with the “*autonomy of institutional arbitral frameworks*”. The discussion in

³¹ Ibid, at paragraph 22.

³² The relief sought by A28 is set out at paragraph 5 above.

³³ Set out at paragraph 34 above.

³⁴ Set out at paragraphs 32 and 31 above respectively.

³⁵ As to the finality of such decisions, see rule 11(4) of the ICC Rules, set out at paragraph 34 above.

³⁶ *Jivraj v Hashwani* [2011] UKSC 40, at paragraph 61 (Lord Clarke).



that case must be read in the context of the provisions of anti-discrimination law with which the judgment was concerned.

45. For these reasons, the ICC Court’s invocation of Article 12(9) of the ICC Rules³⁷ should not, B28 contends, be read as “*an arbitrary override of party autonomy*”; rather “*it represents a carefully calibrated safety valve designed to prevent manifest unfairness in the constitution of arbitral tribunals*”.
46. B28 submits that the ADGM Courts’ jurisdiction to review an ICC Court appointment under Article 12(9) “*is extremely limited and should be confined to cases involving*”:
 - a. those in which the ICC Court has plainly acted outside the scope of Article 12(9);
 - b. a manifest breach of natural justice by the ICC Court in making the appointment;
 - c. a fundamental incompatibility with the law of the seat.
47. The third of those grounds differs from A28’s position by requiring the incompatibility with the law of the seat to be “*fundamental*”. B28’s formulation suggests a degree of flexibility for the courts of the seat to determine whether an institutional rule conflicts with mandatory provisions of the law of the seat.
48. To support its position, B28 relies on *Sierra Fishing Co v Farran*³⁸ to argue that the common law test for apparent bias provides the applicable standard for court intervention with arbitrator appointments.³⁹ B28 submits that the case makes it clear that a supervising court will only interfere with an arbitrator appointment if there are clear and objective grounds justifying doubts as to impartiality of the appointee. I note that *Sierra Fishing Co v Farran* is of limited assistance. It was concerned with the lack of independence of a sole arbitrator appointed by one side but did not consider that question in the context of an appointment made by an arbitral institution.
49. The thrust of B28’s position is that while there is a limited and confined power for a supervising court to exercise jurisdiction to review an appointment decision made by an institution such as the ICC Court, that jurisdiction should only be exercised in the clearest of cases. This, it contends, is not one of them.

Analysis

(a) *The Jurisdiction Issue*

50. The parties agree that this Court has the power to entertain a challenge to an appointment decision of the ICC Court. They differ on the circumstances in which this Court should

³⁷ Set out at paragraph 35 above.

³⁸ *Sierra Fishing Company v Farran* [2015] EWHC 140 (Comm).

³⁹ *Ibid*, at paragraph 51.



exercise that power. The question falls to be examined in the context of whether the ICC Court’s decision breaches any of the mandatory provisions of the Arbitration Regulations. As the Court of Appeal made clear in *A30 v E30*,⁴⁰ “*if the law of the seat imposes mandatory provisions, those provisions cannot be ousted by agreement between the parties...*”.⁴¹

51. Sections 14(6) and 20(2) of the Arbitration Regulations are the mandatory provisions on which A28 rely to contend that this Court ought to intervene in Mr AB appointment as sole arbitrator.⁴²
52. In my view, there is no inconsistency with the mandatory provisions of sections 14(6) and 20(2) of the Arbitration Regulations because:
 - a. B28 does not deny that an arbitration agreement conferring a unilateral right of appointment is valid. Rather, B28’s position is that, as a matter of construction of the Arbitration Agreement, the ICC Court was entitled to appoint an arbitrator. Thus, if I am satisfied that the Arbitration Agreement should be construed in the way B28 contends, the ICC Court’s appointment of Mr AB is not inconsistent with section 14(6).
 - b. Section 20(2) deals with the possibility of apparent bias or the absence of qualifications agreed by the parties. There is no dispute about Mr AB’s impartiality. Nor are there any special qualifications that it was intended he possess before being eligible for appointment as a sole arbitrator. There is no inconsistency with section 20(2) because there are no “*qualifications agreed to by the parties*” that Mr AB does not possess.
53. Therefore, the issue with which I am confronted is one of construction. The Jurisdiction Issue turns on whether the parties’ agreement that A28 appoint the sole arbitrator is compatible with the way in which the ICC Court appointed Mr AB.
54. Sections 14(6) and 20(2) broadly affirm the principle of party autonomy in arbitration agreements and in qualifications required of arbitrators. As a matter of party autonomy, the Arbitration Agreement records the parties’ agreement on five distinct points:⁴³
 - a. Any dispute is to be referred for final resolution by an arbitration to be administered by the ICC under the ICC Rules;
 - b. The seat of the arbitration is ADGM;

⁴⁰ *A30 v E30* [2025] ADGMCA 0003.

⁴¹ *Ibid*, at paragraph 22, citing *A v B* [2007] 1 Lloyds LR 237, at paragraphs 111-112 and *C v D* [2007] EWHC 1541, at paragraph 30.

⁴² Sections 14(6) and 20(2) of the Arbitration Regulations are set out at paragraph 31 above.



- c. The language of the arbitration is English;
 - d. A sole arbitrator is to be appointed; and
 - e. The sole arbitrator is to be appointed by A28.
55. The problem in this case is caused by the clash between seemingly inconsistent provisions of the Arbitration Agreement and the ICC Rules. The Arbitration Agreement states that a sole arbitrator shall be appointed unilaterally by A28. It also provides for arbitration under ICC Rules. Article 12(9) of the ICC Rules expressly authorises the ICC Court, in exceptional circumstances, to appoint the sole arbitrator “[n]otwithstanding any agreement by the parties on the method of constitution of the arbitral tribunal”.
56. I hold that despite the apparent inconsistency,⁴⁴ the Arbitration Agreement is capable of being construed in a compatible manner:
- a. First, by agreeing to the arbitration being administered by the ICC under the ICC Rules, the parties must be taken to have known that one feature of the ICC appointment process is the possibility that the ICC Court might override the parties’ intentions in relation to a proposed appointee.
 - b. Second, Article 12(9) of the ICC Rules provides that, “*notwithstanding any agreement by the parties on the method of constitution of the arbitral tribunal*”, the ICC Court reserves “*in exceptional circumstances*” the right to appoint each member of the tribunal “*to avoid a significant risk of unequal treatment and unfairness that may affect the validity of the award*”.⁴⁵ In agreeing to arbitrate under the ICC Rules, the parties must be taken to have agreed that their separate agreement on the method of tribunal constitution in the Arbitration Agreement could be superseded by the ICC Court in exercising its discretion under Article 12(9).
 - c. Third, nothing in the Arbitration Agreement indicates that the parties intended to exclude the operation of Article 12(9) of the ICC Rules.
57. That approach does not conflict with any mandatory requirements of the Arbitration Regulations. Section 14(6)⁴⁶ of the Arbitration Regulations does not operate to require a unilateral appointment where, on its true construction, the Arbitration Agreement provides for the appointment regime in the ICC Rules to be given priority. Accordingly, the provision in the Arbitration Agreement allowing A28 to “*appoint*” the arbitrator must yield to ICC Court’s application of Article 12(9) of the ICC Rules.⁴⁷ As a result, in my view, there were no

⁴⁴ See paragraph 52 above.

⁴⁵ Article 12(9) of the ICC Rules, set out at paragraph 35 above.

⁴⁷ As the ICC Court’s decision to appoint a sole arbitrator was made under Article 12(9), I do not consider it necessary to address the ICC Court’s reference to Article 13(4)(a) of the ICC Rules when appointing Mr AB.



procedural irregularities in the way in which the ICC Court decided to appoint the sole arbitrator or dealt with A28's challenge to Mr AB's appointment.

58. This Court's role is supervisory. In this particular case, the challenge to the appointment decision is put on the basis that the ICC Court's decision breached mandatory provisions of the Arbitration Regulations. Absent such a breach, the Court does not have jurisdiction to review institutional decisions made in accordance with the parties' agreed arbitral framework. For the reasons given,⁴⁸ I conclude that this Court's supervisory jurisdiction is not engaged. The parties' agreement to the ICC Rules means that the ICC Court's appointment of the sole arbitrator under Article 12(9) and its consequential decision to reject A28's challenge, under Article 14, to that arbitrator's appointment does not offend any mandatory provisions in the Arbitration Regulations. Accordingly, the Jurisdiction Issue is determined in favour of B28.
59. I leave open a further question, which was not specifically raised. It is arguable that when A28 purported to "appoint" AA as its arbitrator, that contractual power was exercised with finality. Its decision, unilaterally, to change that "appointment" to Mr GM⁴⁹ was arguably invalid: whatever the position may be so far as A28's unilateral "appointment" of AA as arbitrator, there is no obvious contractual basis on which it could re-exercise its appointment power to change its appointee.
- (b) *The Preclusion Issue*
60. Given my conclusion that, in the absence of any conflict with a mandatory requirement of the Arbitration Regulations this Court's supervisory jurisdiction to review or set aside the ICC Court's decisions is not engaged, the Preclusion Issue does not arise on the specific facts of this case. As it is possible that, in another case, the Court's jurisdiction could be engaged for reasons other than conflict with a mandatory provision of the Arbitration Regulations, I express my views on the Preclusion Issue. I emphasise that these observations would apply only in a case in which a challenge was made on a basis other than a conflict with the mandatory provisions of the law of the seat.
61. Article 11(4) of the ICC Rules provides that the decisions of the Court "*as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final*". By adopting the ICC Rules, the parties must be taken to have agreed to the finality of decisions of the ICC Court under Article 11(4).
62. Section 13 of the Arbitration Regulations refers to relevant functions of the Court to which sections 19(3), (4), (5) and (6) and 21(2) apply.⁵⁰ They are all functions that are to be performed by the Court subject to any process agreed between the parties "*in the arbitration agreement or by a subsequent written agreement*". Sections 19(2) and 21(1) of

⁴⁸ See paragraph 56 above.

⁴⁹ See paragraph 18 above.

⁵⁰ Set out at paragraph 32 above.



the Arbitration Regulations make clear that the parties are free to agree to different procedures for appointing the arbitrator and for challenging an arbitrator than those set out in those provisions. The parties did agree a separate process by adopting the ICC Rules.

63. Section 19 deals with the appointment of arbitrators.⁵¹ Section 19(2) expressly provides that the parties are free to agree on a procedure for appointing the arbitrator. The parties did so in a manner that adopted the appointment and confirmation regime for arbitrators in ICC arbitrations. Based on my analysis of the Arbitration Agreement, I have held that the unilateral right to appoint conferred on A28 must be read together (and is not inconsistent) with the parties' agreement to conduct their arbitration under the ICC Rules, including Article 12(9).⁵² Accordingly, section 19 does not assist A28 in the present case.
64. Section 21 is also subject to the parties' contrary agreement.⁵³ It deals with challenges to arbitrators. Section 21(1) provides that the parties are free to agree a separate procedure for challenging an arbitrator. The ICC Rules contain their own challenge procedure, on which the parties agreed, and which was used by A28 without success.
65. As the ICC Rules constitute a "*process agreed between the parties in the arbitration agreement*", for the purposes of section 13 of the Arbitration Regulations, the procedures under sections 19 and 21 yield to those mandated by the ICC Rules, including Article 11(4). The consequence is that the ICC Court's decisions on both appointment and challenge are final.⁵⁴
66. Given the finality accorded to appointment and challenge decisions under Article 11(4) of the ICC Rules, this Court is precluded from reviewing whether the ICC Court was justified in finding that "*exceptional circumstances*" existed within the meaning of Article 12(9) of the ICC Rules.⁵⁵
67. For those reasons, I decide the Preclusion Issue in favour of B28.
68. As a result of my findings on the Jurisdiction and Preclusion Issues, I hold that Mr AB has been validly appointed as sole arbitrator.

Costs

69. Having succeeded on both grounds, B28 is entitled to receive costs. It accepts that (as between lawyer and client) costs have been agreed on the basis that AED 50,000 is payable. As that amount is less than that which would otherwise be payable on a standard basis, I award the sum of AED 50,000 to B28.

⁵¹ Set out at paragraph 32 above.

⁵² See paragraphs 56 and 57 above.

⁵³ Set out at paragraph 31 above.

⁵⁴ Article 11(4) of the ICC Rules is set out at paragraph 34 above.

⁵⁵ Article 12(9) of the ICC Rules is set out at paragraph 35 above.



Result

70. For the reasons given:

- a. A28's claim for the declarations and orders set out in paragraph 5 of this judgment is dismissed.
- b. Costs are awarded against A28 in favour of B28 in the sum of AED50,000.
- c. For the avoidance of doubt, I declare that Mr AB has been validly appointed by the ICC Court as sole arbitrator.



Issued by:

A handwritten signature in blue ink, appearing to read "Linda Fitz-Alan".

Linda Fitz-Alan
Registrar, ADGM Courts
17 April 2026