

UAE: No Surprise as Dubai Establishes Full Autonomy of Dubai International Arbitration Centre (DIAC)

In Brief

The recently issued Decree No. 34 of 2021 by Dubai Ruler's Sheikh Mohammed bin Rashid Al Maktoum has been a trending topic. The Decree dissolves the Emirates Maritime Arbitration Centre (EMAC) and the Dubai International Financial Centre (DIFC) Arbitration Institute and assigns their obligations to the Dubai International Arbitration Centre (the **New DIAC**).

Dr Habib Al Mulla had proposed the changes to the Dubai Government and prepared the first draft of the law for the New DIAC. The recommendation was amended however from being a three way merger into an acquisition by DIAC of the other two centres and notably the DIFC-LCIA. The impact of this has been softened by the fact that, as indicated in the draft 2017 DIAC Rules, **the default seat and enforcement court is now the DIFC and DIFC Courts, rather than the Dubai Courts.**

The Decree has achieved two things - **it has established for the first time the full autonomous status of DIAC and stipulated that the DIFC Courts shall be the default procedural and enforcement court of DIAC if an alternative seat is not designated by the parties in the arbitration agreement.**

In Depth

Background to the Decree

Whilst this development may have startled some arbitration practitioners, it would not come as a surprise to those who have been following the UAE Government's gradual steps to enhance the UAE's international arbitration landscape over the past decade. This includes the UAE Court's adoption of a pro-enforcement approach to the enforcement of arbitration awards, the issuance of laws with the objective of promoting foreign investment, and the recent promulgation of the UAE Federal Arbitration Law No. 6 of 2018, which aligns with international arbitration standards. According to a study published in May 2021 by the Queen Mary University of London, Dubai has also been recognized as one of the top 10 preferred arbitration destinations worldwide.

Those in close interaction with the decision makers of the Decree, were not surprised by its issuance. The preparations for this step have been in progress since May 2021. **Dr Habib Al Mulla** had proposed to the Government that in order to enhance Dubai's position as an arbitration centre, it had to do several key things - the establishment of an independent centre was at the core of this. The close affiliation that DIAC had with the Dubai Chamber did not support its growth and international recognition. Dr Al Mulla's suggestion was to abolish all the current arbitration institutions operating in Dubai and merge them into a new centre having the Dubai brand that would be seated in the **DIFC**.

The above recommendation was well received and Dr Al Mulla prepared the first draft of the law for the New DIAC. The recommendation was amended however from being a three way merger into an acquisition by DIAC of the other two centres and notably the DIFC-LCIA. The impact of this has been softened by the fact that, as indicated in the draft 2017 DIAC Rules, **the default seat and enforcement court is now the DIFC and DIFC Courts, rather than the Dubai Courts.**

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Placing the DIFC Courts at the Centre of Arbitration in the UAE – Implications for Enforcement

Designating the DIFC as the default seat addresses the everlasting issue on whether the DIFC Courts can be used as a gateway for enforcement of arbitration awards in circumstances where the award debtor's assets are not located in the DIFC. With this new development, even if the award debtor's assets are located in mainland Dubai, **award creditors can in DIFC-seated arbitrations resort to the DIFC Courts for enforcement of their arbitration awards and thereafter benefit from the onward enforcement of those awards in mainland Dubai** where the award debtor's assets are located.

The Decree also clarifies that the choice of the seat would be the determining factor to ascertain which court would act as the supervisory court over arbitration proceedings. The Decree states that if the arbitration agreement specified Dubai as the seat of arbitration, the applicable law shall be the UAE Federal Arbitration Law and the Dubai Courts shall be the curial courts.

If the parties have identified the DIFC as the seat of arbitration, then the DIFC Arbitration Law shall apply and the DIFC courts shall act as the supervisory courts. This should also alleviate the confusion that sometimes existed between the Dubai Courts and DIFC Courts as to which of them should act as the supervisory courts irrespective as to where the award debtor's assets are located.

In addition, **the Decree clarifies that a reference to Dubai as the seat of arbitration does not encompass the DIFC and vice versa**, which was also a controversial topic that could come into play upon the existence of a dispute.

It is yet to be seen if these clarifications would be sufficient to convince the arbitration community of the value of this major change. Some practitioners have argued that this move away from the LCIA will damage Dubai's reputation as an international arbitration hub. However, such proposition neglects a compelling fact that the DIFC-LCIA never promoted Dubai.

Full Autonomy and Independence – What is Still to Come

The Decree aims to provide arbitration players with a one-stop-shop for arbitration disputes through a united arbitration centre irrespective of whether those disputes are domestic, international or maritime related.

Whilst the Decree may appear as an acquisition of two existing DIFC arbitration centres by an onshore centre, one cannot ignore the fact that the existing DIAC has also been replaced by **the New DIAC that enjoys financial and administrative independence of the Dubai Chamber, with headquarters in both Dubai and the DIFC**. The New DIAC will also have a Court of Arbitration to supervise arbitration proceedings and scrutinize draft awards, similar to the courts within the ICC and LCIA.

The DIAC Court shall, in time, also issue and implement arbitration rules without the need to obtain the Ruler of Dubai's approval. This will provide flexibility for the rules to embrace and adapt to any changing trends in arbitration practices more efficiently and in tandem with those developing trends. In addition, **the Decree provides that DIAC shall be accountable for civil liability arising from inadvertent mistakes committed by arbitral tribunals**. This provides reassurance that the New DIAC would imminently address potential challenges raised by the parties against arbitral tribunals.

Practical Steps

The Decree has made it clear that **ongoing cases under the rules of the dissolved centres and any tribunals constituted by 20 September 2021 shall continue to hear and determine all arbitration cases before them** without interruption and under the same arbitration rules which currently apply to such arbitrations.

This provision aims to maintain the integrity of existing arbitration proceedings. It is therefore evident that the aim of the Decree is not to demolish the effect of existing DIFC arbitration rules, but have those rules integrated, in due course, into a unified set of rules provided through one arbitration centre in Dubai – the New DIAC.

For now, **businesses should no longer include a reference to the DIFC-LCIA in any new contracts currently being negotiated**. Rather, the reference should be to DIAC or any other arbitration institution of the parties' choice.

If your existing contract references arbitration under the DIAC Rules, we advise you to monitor the changes that have been promised to the existing DIAC Rules over the next six months. Those changes may apply to any future dispute(s) depending on the wording of your dispute resolution clause. If you have no designated seat in your dispute resolution

clause, then the default seat will now be the DIFC. If you have elected a seat (London, Dubai, etc.) that election will be upheld.

If your existing contract references arbitration under the DIFC-LCIA Rules or EMAC Rules, the Decree does confirm that all such contracts existing prior to 20 September 2021 will be considered valid and binding. The Decree confirms that DIAC will oversee any disputes that arise from such contracts. That being said, parties with such agreements will wish to monitor how things develop over the next six months, to ensure any uncertainties as to the application of these contracts are addressed. If waiting is not an option (due to time bar or commercial considerations), parties can consider amending the reference in such contracts now from DIFC-LCIA or EMAC to an alternative arbitral institution (such as DIAC), to avoid any level of uncertainty that could at best, lead to a delay in the proceedings and at worst, result in a challenge to their validity.

Designating the Abu Dhabi Global Market (ADGM) as an alternative dispute resolution forum may be a potential solution, but parties should not underestimate the prolonged time and cost implications that may arise at the time of enforcement in situations where the award debtor's assets are not readily accessible in the ADGM but in other Emirates where a memorandum of understanding on enforcement of awards does not exist.

To speak to us in relation to the Decree, any disputes or arbitration related matters, or issues generally, please feel free to contact one of the team members below or your usual Baker McKenzie contact.

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